The Central Law Journal.

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OUR issue of next week will be the index for the current volume. It is our desire and intention to give our readers a complete index, not only to the main body of the JOURNAL, but also one for the "weekly digest of current opinions." We are free to say that since we began the publication of these "digests" some years ago, the question as to a convenient and satisfactory index has more or less perplexed us. We found, by experience, that it is impossible to combine the index to matter appearing in the main body of the JOURNAL, and to the weekly digests without rendering both valueless. And on the other hand, a separate word index, to the great mass of digests comprehended in one volume, was too general, entailing upon the searcher considerable useless labor. The latter system proved so unsatisfactory, after repeated trials, that in our last index we made no effort to give references to the digests, except in a very general way. This omission proving equally unsatisfactory, we went to work earnestly with the hope of solving the problem once for all, and as a result we feel justified in now announcing an index which we believe, will, in all respects, prove satisfactory. We shall give our subscribers an index, or more correctly speaking a thorough digest to the main body of the JOURNAL, including editorials, notes of recent decisions, leading articles, annotated cases, book reviews, etc. We will also issue a separate subject index to the "weekly digests of current opinions," so arranged as to be of practical value and of ready reference. Inasmuch as we have either in full or in digest form, practically reported every opinion, of any value, filed in every court of last resort of the United States, the value of an accurate index to the practitioner will be readily understood.

THE old proverb which, in terms at least, is not complimentary to the man who undertakes to be his own lawyer, is again illustrated in the matter of the Tilden will, the fate of which adds further testimony to the popular belief that a great lawyer is often not capable of making his own will. According to a decision just rendered by the general term of the New York Supreme Court, the late Samuel J. Tilden, who, in his time, was regarded as a lawyer of eminence, has failed to make a valid disposition of his property to the "Tilden Trust," an institution which he intended to have incorporated for the establishment of a free library and reading room in the City of New York. In his will Mr. Tilden requested his executors to obtain from the legislature the incorporation of the "Trust," and authorized them to convey the entire available residue of his estate, after the deduction of certain bequests, or such portion thereof as they should deem expedient, to the trust. The court holds that the devise is void for indefiniteness, and that the discretionary power vested in trustees is incompatible with the existence of a trust. If this decision should be sustained by the Court of Appeals a noble provision for the establishment of a public library, amounting to about $4,500,000, will be lost to New York city. Up to the present, it should be noted, the supreme court judges, before whom the will has come, have been equally divided upon the question of its validity. The judge before whom the will first came held the trust provision valid, and one of the three general term judges, a judge of much ability and learning, too, dissents from the decision overruling the earlier judgment.

THE New Jersey Court of Errors and Appeals has recently been called upon to decide the question whether a bequest for the purpose of aiding the dissemination of doctrines antagonistic to portions of the existing legal system will be upheld by the courts. The case arose under a will containing a bequest of money to aid Henry George in the dissemination of his economic writings. The heirs of the testator endeavored to have the bequest set aside, and Vice-Chancellor Bird decided in their favor on the ground that the doctrines of Henry George were antagonistic to the law, and were therefore of such a character as to make it improper for the courts to aid in their dissemination. The Court of Errors

and Appeals of the State in an interesting opinion written by Chief-Justice Beasley has just reversed this decision and sustained the bequest upon the ground that a proposition to alter the law in accordance with the law is not opposed to the law, a conclusion which must be regarded as reasonable whatever view may be taken of the doctrines in question.

NOTES OF RECENT DECISIONS.

THE question, which is frequently of vital importance in cases of negligence, as to who is a vice-principal as distinct from a fellow-servant came before the Supreme Court of Nebraska in Chicago, B. & Q. Ry. Co. v. Sullivan, 43 N. W. Rep. 415, where it was held that a person who is clothed by a corporation with the control and management of a distinct department, in which his duty is that of direction and superintendence, is a vice-principal. Maxwell, J., says:

In the case of Railroad Co. v. Ross, 5 Sup. Ct Rep. 184, the question as to a vice-principal of a railway company was involved, and, in a carefully prepared and elaborate opinion, it was held, in effect, that one who was clothed by the corporation with the control and management of a distinct department, in which his duty is that of direction and superintendence, is a vice-principal, Justice Field, in his opinion in that case says: "There is, in our judgment, a clear distinction to be made in their relation to their common principal between servants of a corporation exercising no supervision over others engaged with them in the same employment, and agents of the corporation clothed with the control and management of a distinct department, in which their duty is entirely that of direction and superintendence. A conductor having the entire control and management of a railway train, occupies a very different position from the brakeman, the porters, and other subordinates employed. He is in fact, and should be treated as, the personal representative of the corporation, for whose negligence it is responsible to subordinate servants. This view of his relation to the corporation seems to us a reasonable and just one, and it will insure more care in the selection of such agents, and thus give greater security to the servants engaged under him, in an employment requiring the utmost vigilance on their part, and prompt and unhesitating obedience to his orders. The rule which applies to such agents of one railway corporation must apply to all, and many corporations operate every day several trains over hundreds of miles, at great distances apart, each being under the control and direction of a conductor specially appointed for its management. We know from the manner in which railways are operated that, subject to the general rules and orders of the directors of the companies, the conductor has entire control and management of the train to which he is assigned. He directs when it shall start; at what speed it shall run; at what stations it shall stop, and for what length of time, and everything essential to its successful movements; and all persons employed on it are subject to his orders. In no proper sense of the term is he a fellow-servant with the fireman, the brakeman, the porters, and the engineer. The latter are fellow-servants in the running of the train under his direction, who, as to them and the train, stands in the place of, and represents, the corporation. As observed by Mr. Wharton, in his valuable treatise on the Law of Negligence: 'It has sometimes been said that a corporation is obliged to act always by servants, and that it is unjust to impute to it personal negligence in cases where it is impossible for it to be negligent personally. But, if this be true, it would relieve corporations from all liability to servants. The true view is that, as corporations can act only through superintending officers, the negligences of those officers, with respect to other servants, are the negligence of the corporation. Section 232*a*.' "

The above case is reported in 17 Amer. & Eng. R. Cas. 501, and in a note it is said: "No rule has yet been laid down which can be applied with entirely satisfactory results. Whether or not a foreman or superintendent has the power to employ and discharge those acting under him has been in some cases proposed as the crucial test of whether he is a vice-principal or not." Chapman v. Railroad Co., 55 N. Y. 579; Railroad Co. v. Little 19 Kan. 257; Stoddard v. Railroad Co., 65 Mo. 514; Hofnagle v. Railroad Co., 55 N. Y. 608; Cook v. Railroad Co., 63 Mo. 397; Railroad Co. v. Decker, 82 Pa. St. 119; Railroad Co. v. State, 44 Md. 283; Railroad Co., v. Salman, 11 Kan. 83; Railroad Co. v. May, 15 Amer. & Eng. R. Cas. 320. But this test is unsatisfactory. It is, we believe, true that in every case where the power to employ and discharge exists, the relation established has been held to be, not that of a fellow-servant, but of vice-principal. The correlative of this proposition does not, however, obtain. There are cases where the right to employ and discharge is absent, in which notwithstanding, the relation of vice-principal has been held to be established, and liability has been imposed upon the company accordingly. It is in some cases held that servants, who are engaged in entirely different branches of railroad employment, are not to be regarded as fellow-servants, within the meaning of the law. Accordingly some authorities are to the effect that a company is liable for injuries to train hands, occasioned by the negligence of a repair-man upon the track, and *vice versa*. Railroad Co v. Jones, 9 Heisk. 27; Ryan v. Railroad Co., 60 Ill, 171; Railroad Co. v. Power, 74 Ill. 341; Railroad Co. v. O'Connor, 77 Ill. 391; Dick v. Railroad Co., 8 Amer. & Eng. R. Cas. 101.

The cases relating to the subject of vice-principal and fellow-servant are involved in great conflict and confusion, and it is impossible to harmonize them. Some of these cases seem to make distinctions without an essential difference in the facts. The subject is very fully discussed in 7 Amer. & Eng. Cyclop. Law, 838-844; and the general rule to be deduced from the later decisions is that it is not the rank of the employee, but the nature of the duty with which he is clothed, that is decisive, and in our view the classification made by the Supreme Court of the United States is correct, and in consonance with our own decisions.

WHAT is known in traders' parlance as "concerning the market" was declared illegal by the Supreme Court of Illinois in Samuel

v. Oliver, 22 N. E. Rep. 499. There it was held that a combination to raise the price of wheat by buying all the wheat in the market, and then making contracts for the sale of wheat for future delivery, is illegal at common law. An agent who knowingly aids his principal in effecting the unlawful combination cannot recover for advances made for such purpose. The court says:

Public policy will not permit appellants to recover for the money advanced by them in the illegal business of appellees, nor will the law give an action to appellees to recover from appellants moneys paid to them by other parties in the prosecution of such illegal enterprise. *Ex turpi causa non oritur actio.* The enhancement of the price of an article of prime necessity, such as wheat or other articles necessary for food, for purposes of extortion, is against public policy. Fuller v. Dame, 18 Pick. 472; Dewitt v. Brisbane, 16 N. Y. 508. "Combinations whose object is to create what are known as 'corners' in the market, or to control the traffic in any staple which is a popular necessity, or to enhance the prices thereof, or to withhold the same from the market, * * * are void." Greenh. Pub. Pol. 642; Wright v. Crabbs, 78 Ind. 487; Craft v. McConoughy, 79 Ill. 350. Such a transaction, if had in the State, would be void as being in contravention of the Criminal Code. Rev. St. Ill. ch. 38, § 130; Schneider v. Turner, ante, 497. An agreement to make a corner in stock by buying it up so as to control the market, and then purchasing for future delivery, is illegal, and a party thereto, whose funds have been used by his consent in carrying out the agreement, cannot recover the same back. Sampson v. Shaw, 101 Mass. 145. So it has been held that one who loans or advances money to be used for the purpose of making a corner in wheat cannot recover. Raymond v. Leavitt, 46 Mich. 447, 9 N. W. Rep. 525. So also, money paid in furtherance of an illegal transaction or purpose cannot be recovered by the party advancing the same. Ball v. Gilbert, 12 Metc. 397; Dixon v. Olmstead, 9 Vt. 310; Wheeler v. Russell, 17 Mass. 258; People v. Fisher, 14 Wend. 9.

When the employment of an agent relates to the performance of an immoral or illegal act, it is said by Wharton, in his work on Agency (§ 25), neither party can make the contract the basis of a suit against the other. Advances for illegal purposes fall within the same rule, and cannot be recovered by the principal of the agent, or the agent of the principal. *Id.* § 319. It follows therefore that if one party cannot maintain an action in respect of matters growing out of his employment, on account of its being illegal or contrary to public policy, neither will an action lie against him by one participating in the illegal transaction conducted in pursuance of such employment. It would seem self-evident that if the agent, who merely aids the principal in the prosecution of an illegal business, cannot recover for services or money advanced by him in the conduct of the business, the master or principal should not be permitted to recover against the agent for money received by him in the course of such business.

A NOVEL consideration for a contract was recognized by the Court of Appeals of Kentucky in Talbott v. Stemmon's Executor, 12 S. W. Rep. 297. There, the plaintiff agreed with his grandmother to abandon the use of tobacco during her life, she agreeing to give him at her death five hundred dollars. This was a suit brought against her executor for the amount. The court below ruled that the agreement was not based on sufficient consideration and was a mere gratuity. The court of appeals, in reversing, says:

There is nothing in such an agreement inconsistent with public policy, or any act required to be done by the plaintiff in violation of law; but, on the contrary, the step-grandmother was desirous of inducing the grandson to abstain from a habit, the indulgence of which she believed created a useless expense, and would likely, if persisted in, be attended with pernicious results. An agreement or promise to reform her grandson in this particular was not repugnant to law or good morals, nor was the use of what the latter deemed a luxury or enjoyment a violation of either; and so there was nothing in the case preventing the parties from making a valid contract in reference to the subject-matter. In the classification of contracts by the elementary writers, it is said: "An agreement by one party to give, in consideration of something to be done or forborne by the other party, or the agreement by one to do or forbear in consideration of something to be given by the other, are such contracts, when not in violation of law, as will be held valid." Whether the act of forbearance or the act done by the party claiming the money was or not of benefit to him is a question that does not arise in the case. If he has complied with his contract, although its performance may have proved otherwise beneficial, the performance on his part was a sufficient consideration for the promise to pay. The right to use and to enjoy the use of tobacco was a right that belonged to the plaintiff, and not forbidden by law. The abandonment of its use may have saved him money, or contributed to his health; nevertheless the surrender of that right caused the promise, and, having the right to contract with reference to the subject-matter, the abandonment of the use was a sufficient consideration to support the promise. Mr. Parsons, in his work on Contracts, (volume 1, 7th Ed., *489,) says: "The subject-matter of every contract is something which is to be done, or which is to be omitted;" and, where the consideration is valuable, it need not be adequate. If, therefore, one parts with that he has the right to use and enjoy, the question of injury or benefit to the party seeking a recovery by reason of a full performance on his part will not be inquired into, because, if he had the legal right to use that which he has ceased to use by reason of the promise, the law attaches a pecuniary value to it. If this was an action to recover such damages as the party had sustained by reason of the violation of the covenant or promise, the verdict or judgment would doubtless be nominal only; but where the parties have agreed on the amount to be paid on the performance of certain conditions, when a compliance with those conditions has been alleged and shown, the sum agreed on must be paid.

A QUESTION as to the transfer of corporate stock came before the Supreme Court of California in Tafft v. Presidio & Ferries Ry. Co.,

22 Pac. Rep. 485. There it was held that if the attorney in fact of a stockholder presents the certificate of stock, together with a power of attorney from the stockholder giving him full authority to deal with the stock, and the corporation's officers are ignorant of any intention on the part of the attorney to misappropriate the stock, the corporation will not be guilty of conversion simply by issuing another certificate in the name of the attorney, who appropriates the stock wrongfully. The fact that the attorney was also a director of the corporation does not warrant the presumption that the corporation had notice of his intention to convert the stock to his own use, as he assumed to act, not for the corporation, but for his principal. The lack of the owner's indorsement on the certificate was not inconsistent with the right of the attorney to cause the stock to be transferred to himself. The neglect of the officers to require an indorsement of the certificate is only non-feasance, and is no evidence of conversion. It is not the duty of the officers of a corporation to inquire into the motives of an attorney in fact, having full power to transfer stock, for desiring it to be transferred to himself. The court says:

The defendant was not a party to the transfer. Its function was simply ministerial, and its actions solely dependent upon the ostensible authority of Bowman to demand the transfer. Cook, Stocks, § 386; Helm v. Swiggett, 12 Ind. 195; Crocker v. Railroad Co., 137 Mass. 417; Brewster v. Sime, 42 Cal. 143. In Crocker v. Railroad Co., 137 Mass. 417, an executor had induced a corporation to transfer stock which belonged to the estate, and stood in the name of his testator, in fraud of the estate, by which the estate lost it; the corporation having notice of the representative character of the executor. The object of the action was to make the corporation responsible for negligence in transferring the stock under these circumstances. The court, by Morton, C. J., said: "If it [the corporation] issues a new certificate upon a forged or an unauthorized transfer, the real owner retains his property in the stock, and the corporation may also be liable to a *bona fide* holder of the new certificate. But when a transfer by one who has the full power to transfer is presented, the corporation has the right to act upon it, and it is not its duty to inquire into the purposes of the parties, or to investigate the question whether the transaction is in good faith or is fraudulent." In Field v. Schieffelin, 7 Johns, Ch. 150, the head-note correctly expressed the substance of the decision of the chancellor, as follows: "A guardian having the legal power to sell or dispose of the personal estate of his ward in any manner he may think most conducive to the purposes of his trust, a purchaser who deals fairly has a right to presume that he acts for the benefit of his ward, and is not bound to inquire into the state of the trust; nor is he responsible for the faithful application of the money, unless he knew, or had sufficient information, at the time, that the guardian contemplated a breach of trust, and intended to misapply the money or was in fact, by the very transaction, applying it to his own private purpose." See also, Albert v. Bank, 2 Md. 169; Hutchins v. Bank, 12 Metc. 421; Ashton v. Bank, 3 Allen, 222. In Bank v. Cox, 11 Rich. Eq. 344, it appears that Madam S., being the owner of 50 shares of stock in South Carolina State Bank registered in her name, and of which she held the certificate, delivered the certificate, without indorsement, to B, and at the same time executed to B, a power of attorney, authorizing him to transfer the stock. B assigned the stock to Cox, and used the proceeds for his own purposes. Cox applied to the bank to have the stock transferred to him on the books of the bank, which was opposed by S on the grounds that she had not indorsed the certificate; that B had committed a breach of trust in assigning it, and converting the proceeds to his own use; and that B was totally insolvent. The bank interpleaded the parties. Upon these facts, substantially, the chancellor decreed that the bank transferred the stock to Cox, and in doing so said: "Whatever may have been the motive for the delivery of the certificate of stock and the power of attorney to B, she (S) invested him (B) thereby with all the *indicia* of property and ownership as to said shares of stock, and, if he abused her confidence, she must bear the consequences. [Page 349.] * * * The evidence is plenary that, according to commercial usage, this possession of the certificate and a power of attorney in this form imported ownership, [Page 350.]" The court of appeals in affirming this decree, said: "B had been put in possession of this scrip, with an indefinite power of disposition, by S, and, if he was not the owner, (of which ownership there is much evidence,) she exhibited him in a light which enabled him to lay claim to the stock. Under such circumstanees, equity would not permit her to avail herself of the dry skeleton of title which yet stands formally in her name, to defeat him whom she has contributed to deceive. The transfer should have been formally made; and this court will not take notice of that as undone which ought to have been done." *Id.* page 391.

If, according to the authorities above cited, the defendant may have looked upon Bowman as the equitable owner of the stock, by reason of his possession of the certificate, and his power to transfer the stock, it would only follow that defendant had notice that, while Bowman was the authorized agent of the plaintiff to sell and transfer her stock, he had purchased the stock in question from his principal, as he unquestionably had a right to do, provided that he dealt with her fairly and honestly (Civil Code, § 2230; Rubidoex v. Parks, 48 Cal. 215; Blockley v. Fowler, 21 Cal. 329; Golson v. Dunlap, 73 Cal. 157, 14 Pac. Rep. 576); and it was not the duty of defendant to inquire whether or not he had defrauded, or intended to defraud, his principal that being a matter in which the principal and agent alone were interested. It did not concern third persons having no interest in the matter of the assignment of transfer of the stock; and such was the relation of the defendant to the transaction. On the presumption that the defendant knew the law applicable to the transaction, it can only be charged with notice that plaintiff could avoid the assignment as against Bowman, unless he could prove that it was perfectly fair and honest; but such notice did not impose upon the defendant a duty to intervene between the parties, and object to the transfer, which, for aught that appears, may have been perfectly fair and

honest. If this view of the transaction is correct, it follows that the defendant had no notice that Bowman, as agent for the plaintiff, assigned her stock to himself without her consent; and it is therefore unnecessary to decide what effect such notice, if given, would have had. "It is however, of no consequence," says an author, "that the title of the purchaser is voidable, if it has not been, in fact, avoided; because, by the definition of the term 'voidable,' the title of the purchaser, in such a case, is valid until it is avoided." Low. Tr. Stock, § 138.

I do not understand that it is contended by the learned counsel for the respondent that the defendant converted plaintiff's stock otherwise than by aiding or assisting Bowman to convert it to his use alone; for it is not pretended that the defendant had or sought any use, profit, or advantage by the converson; nor, as before remarked, does the evidence tend to prove that defendant had actual or constructive notice of Bowman's conversion, or of his intention to convert; and the only act by which it can be claimed that defendant, even unconsciously, aided or assisted Bowman to convert the stock, was the act of transferring it on the books of the company at Bowman's request; which request was ostensibly authorized by the plaintiff. I have found no authority for a constructive conversion upon facts similar to the facts of this case. Perhaps Dodge v. Meyer, 61 Cal. 405, may be regarded as furnishing a pattern of a cause of action for constructive conversion, with little, if anything, to spare. In that case, however, the defendant, Meyer, had actual notice of the intention to convert, and intentionally aided and assisted in the conversion for his own benefit.

SHALL THE STATE COURTS ADOPT THE FEDERAL DOCTRINE OF "GENERAL PRINCIPLES OF JURISPRUDENCE?"

[*Continued from current volume, p. 470.*]

In 1874, in a suit in Illinois[1] against a railroad for failure to deliver goods shipped in Milwaukee to Eau Claire, both places being in Wisconsin, where the defence was that the defendant had safely carried the goods over its line and delivered them to the next carrier and that the loss occurred on the line of this next carrier, it was proven that this was the full duty of the defendant under the bill of lading, by the decisions of Wisconsin courts. But it was equally clear, says the Supreme Court of Illinois, that the contract in the case was, by the Illinois decisions, a contract to deliver at Eau Claire. The court was, however, clearly of opinion that the case was to be governed by the Wisconsin rule; they say: "Inasmuch as the witnesses * * * state that they do not think the law of Wisconsin to be different from the common law, * * their testimony, it is said, amounts to no more than an opinion on their part that such is the common law; and that this court must say for itself what the common law is upon this point. But the common law is not unvarying in all places where it prevails. * * * Now the question is not what is the common law of England or of this State, but what is the common law, in this respect, of Wisconsin? The courts of that State are free to act upon their own notions of public convenience, as well as the courts here.[2]

In a case[3] in South Carolina in 1887, the charge of the court below makes it seem that the same point of the floating, universal, character of the common law had been argued, but it met with little favor. The question was, whether, in a negligence suit by a minor, his contributing negligence could, under the facts, be set up as a defense. The accident had occurred in North Carolina, and the court held that the question was to be decided by the rule laid down by the courts of that State and no other: "The injury was inflicted there, and if the parties had remained in that State and brought action there, they would have been compelled to stand or fall by the law there. And we cannot see upon principle how stepping over the line could give the plaintiff a new and altogether enlarged cause of action—in fact a cause of action which he did not have before."

The question of fellow-servant or not arose again in 1887 in Mississippi, in a case[4] where the accident had occurred in Louisiana; but the court was very clear that the rule of decision was that laid down in Louisiana, though it difered from that in Mississippi and in most of the States. It should be added that the decision would have probably been the same upon other grounds.

Another case upon the general principle doctrine is now pending in the Supreme Court of Pennsylvania;[5] the question being

[1] Milwaukee & St. Paul R. R. v. Smith, 74 Ill. 197.

[2] See also Ryan v. R. R. Co., 65 Tex. 13.

[3] Bridger v. R. R. 27, S. C. 456.

[4] McMaster v. R. R., 65 Miss. 264.

[5] Since this article was written, this case has been decided, and the doctrine of a general commercial law has been squarely met in the opinion of Mitchell, J., and found little favor. He writes that, as that view is now frequently advanced, "it is time to say plainly that it rests upon an entirely inadmissible and untenable basis. There is no such thing as a general commercial, or general common law, separate from, and irrespective of a particular state or government, whose

whether, in a suit against a railroad for negligent injury of property shipped over it, and where the goods were shipped and the accident occurred in New York, a stipulation in the bill of lading exempting the carrier from liability for negligence is a good defence. It is clearly decided in New York that it is a good defence, and in Pennsylvania that it is not, but the vital question in the case is whether the New York rule or the Pennsylvania rule, or that of the real or supposed general principles is to apply.

These few cases are the only ones found in which the State courts have been directly appealed to, to depart from the ordinary rules for the interpretation of contracts which they and all the courts of the civilized world, with one exception, have applied in thousands of cases, whether depending on general principles or not. They are as yet but very few in number; but, once started as they now have been, they are likely to arise often enough, and they present a very grave question. Shall the State judiciaries yield to the appeal, and aid in extending a system, whose very corner-stone is the existence of radically different rules of property for precisely like transactions? A merchant gives two notes for the same liability at the same time to the same payee; if sued on one of them in the State court, he may set up the equities and escape payment; while, on the other which has reached the hands of one who can sue in another forum, he is held liable to the full.[6] A common carrier issues two bills of lading *in ipsissimis verbis* on one day and at one place, each containing a stipulation against liability for his negligence: a suit on one of them is dismissed in a *per curiam* of two lines, on the ground that the settled law of the State is that the stipulation is valid, but the suit on the other in a different forum results in a full recovery, because general principles hold the stipulation to be void.[7] A party, who has in good faith loaned money on one of a series of fraudulently issued bills of lading, must submit to a judgment against him, though another suitor (who chanced to sue in another State or whose defendant has not exercised his federal right of removal), has made a full recovery upon another of the very same bills.[8] The same party sued by two plaintiffs upon a liability as an alleged stockholder in a corporation; is liable to plaintiff John Doe, because he was a stockholder, and is not liable to Richard Roe, because he was not a stockholder.[9] Are not anomalies such as these a very scandal to an enlightened people's jurisprudence? And yet they are by no means accidental, or such as must happen at times in the practical working of any great machinery; but are actual types, the very pith and marrow of the system in question.

Sound professional advice may be difficult enough even when this rule is confined to the federal courts; but it would be absolutely impossible, should the rule become of general application, for no lawyer can possibly know the law of every State in which his client may be sued. There will then be not only two rules of property in regard to the same matter, as there is now under the mere federal adoption of the rule; but there may be as many as there are forums in which suit can be had. The most learned opinion, and one absolutely correct by the law where the contract was made, may be rendered worse than useless to the client, if he chance to be sued in another forum and if the courts there hold the matter to be one of general principle. And, when such a case is ripe for suit, the first point and one of prime importance for the plaintiff's lawyer to decide, will be where to institute suit. The result will

authority makes it law. * * There must be a state or government of which every law can be predicated, and to whose authority it owes its existence as law. Without such sanction, it is not law at all, with such a sanction it is law without reference to its origin, or the concurrence of other States or people. Such sanction it is the prerogative of the courts of each State itself to declare. Their jurisdiction is final and conclusive, and in this respect there is no distinction between statute and common law. * * The so-called commercial law derives all its force from its adoption as part of the common law, and a decision upon the commercial law of a State stands upon precisely the same basis as a decision upon any other branch of the common law." The opinion recognizes that the assertion of the doctrine in the State courts has grown out of the "unfortunate misstep" made in Swift v. Tyson (by Judge Story), and presents so strongly the utter lack of basis for the doctrine that it may be hoped that it may prevent any other State from adopting it. See the case reported, (Forepaugh v. R. R., 24 Weekly Notes of Cases (Philada.) 385).

[6] Swift v. Tyson, 16 Peters, 1. Were it not for a rule of procedure, a party in such case might be liable upon one-half, and escape liability upon the other half, of the *very same note*, when a half interest in it had been assigned.

[7] R. R. v. Lockwood, 17 Wall. 357.

[8] Friedlander v. R. R., 130 U. S. 416.

[9] Burgess v. Seligman, 107 U. S. 20.

often depend altogether upon the decision of this question; and there will frequently be a very wide choice. Some railroads extend through numbers of States, and many insurance companies are to be found in a majority of them; while individuals, too, are by no means always residents only of one or two places. What a gross discredit would it not be to our law-system, if plaintiffs are first to study where their best chance of success will be, or may resort to tricks and semi-fraudulent devices [10] to secure the most favorable jurisdiction. But the essential fallacy of the whole thing lies in the assumption of the existence of any such body of general principles.[11] They are nowhere to be found laid down with authority; no law-giver has ever enacted them—if even any can in our country —and the judicial rulings upon the subject are almost to be counted by a few scores. Moreover, as judicial rulings upon subjects not governed by statute are supposed to be largely based upon the customs of citizens, which have been acted upon in thousands of unlitigated instances, and which are the very bone and marrow of our common law, it is surely very hard to find any basis of reason for these general principles, which are acknowledged to have application in but a paltry minority of the cases arising in any State, and which essentially depend upon the right of suit in an unusual forum. So far as the common law is concerned, the doctrine is certainly untenable, for it cannot be seriously maintained that in fact the common law is the same body of rules in Massachusetts, which was settled from England early in the seventeenth century; in Washington, which is settling by Americans in the end of the nineteenth; in Louisiana, which has never had the body of the common law; and in Texas and California, whose laws are a compound of provincial Spanish and rather recent American law. In addition to this, it is admitted that, if the matter in question is regulated by a State statute, the supposed general principle is annihilated, or is at least banished from the State in question. It can be made naught by a mere declaratory statute, which puts in words the custom of citizens, without changing the custom in one iota. There seems to be no rational difference in this respect between judicial and statute law, and there is certainly none between judicial law and that of a declaratory statute.

Again, the general principles ought to form a system complete in themselves, but they do no such thing, and it has at times been necessary to help them out by the aid of State law. This has been done as to the question [12] of a parol acceptance of a bill, and as to whether a bond drawn to "A or bearer" would pass [13] by delivery without indorsement, in each of which it had to be settled by what State's laws the contract was to be ruled:[14] so the law of the State applies in part and in part does not. Nor does the system work any better in practice. Points long since settled in it are still questioned [15] in the supreme court; no one can possibly tell whether the court may not in any par-

[10] From at least 1797, efforts have been made to acquire the federal jurisdiction by assignment: See my prior article (pp. 482-4), and Farmington v. Pillsbury, 114 U. S. 138, and Little v. Giles, 118 U. S. 596, for the devices to which resort is had to enable a party to recover in the name of another, and see the never-to-be forgotten case of Stewart v. Lansing, *supra*, where the plaintiffs was probably *nomen et praterea nihil*. In most of these cases the effort failed, but it will hardly be questioned that it must have often succeeded. In Bucher v. R. R., 125 U. S. 555, the plaintiff first sued and got judgment in a State court; but, a new trial being granted, it apparently occurred to his attorney that there was a better chance in the federal court, under a decision in 23 How. 209. So he took a nonsuit and issued a fresh writ in the U. S. Circuit Court. This effort also failed, though there were two dissents. Mr. Heiskell (16 Am. L. R. 759) has well said: "If I can take one side of a given case and succeed in it by going into the U. S. courts, or take the other and succeed in the State court, it is too clear for argument that there is something wrong."

[11] In Liverpool Steam Co. v. Phenix Ins. Co., 129 U. S. 397, the question was as to the validity, in a maritime case, of a carrier's stipulation against negligence—liability, and the supreme court was asked to decide it by the general maritime law: but it doubted the existence of such a law, and said: "The general maritime law is in force in this country or in any other so far only as it has been adopted by the laws or usages thereof." A remarkably clear statement, it would seem, of the standing of such vague general systems; but is it not far less applicable to the maratime law, the usages of which *are* largely of international growth, than to the common law, which is altogether an outgrowth of local customs?

[12] Scudder v. Bank, 91 U. S, 406.

[13] Ottawa v. Bank, 105 U. S. 342, and see Roberts v. Bolles, 101 U. S. 119.

[14] This had to be determined also in Tilden v. Blair, 21 Wall. 241 so as to learn what statute upon usury should control, and see also Embrey v. Jamison, 131, U. S. 336, and Wall v. Society, 32 Fed. Rep. 273.

[15] See Swift v. Tyson, 16 Peters, and R. R. Co. v. Bank, 12 Otto, 14.

ticular case [16] think it best to overrule their prior decision and follow the intermediate State decisions; and in at least one instance,[17] after they had refused to follow the State court upon the meaning of a private act of assembly, they did some years later overrule their first decision upon the very same act's meaning. All this makes hopeless uncertainty, and in the case of the private act certainly gross injustice was done to some one in the first federal suit.

The whole doctrine of the general principles seems to involve a failure to realize the true reasons, upon which are based the rules for the interpretation of contracts laid down in cases and treaties on the Conflict of Laws. The rule of the *lex loci contractus*, for instance, is not an arbitrary one, merely chosen because no better can be found, but is based upon the actual fact and truth of the case. Some rules of law are undoubtedly largely arbitrary and only true in a small majority of the cases to which they apply; but the rules here concerned are probably true in almost every single instance. If I make a contract in Pennsylvania, the probability is enormous that the contract is actually moulded and worded in accordance with the special rules of Pennsylvania law; and, if I go to Missouri and make another contract there, I will inquire in the first instance how to secure my rights under the Missouri law. Learned professional advice is often taken in such cases, and it may be safely said that it is never given but with a view to the law of the proper State. The very exceptions to the rule of the *lex loci contractus*, too, prove the same thing. For, if it is apparent that the parties contracted with a view to any other law, that law becomes at once the rule of the case; and, if any further act is done in pursuance of the same contract by the parties in and with a view to another system of laws, this last system applies to such new act. This is all evidently based on the actual intention of the parties.

It is an unquestionable fact that, in each of our States, as well as in other countries, separate and often diverse customs grow up and are then acted upon in thousands of unlitigated transactions. The same words may have a different meaning in two States, and the universal custom as to special commercial transactions may be utterly different. Thus, I believe it is the case that discount by banks in Philadelphia is made upon a different basis, as to the calculation of days, from that in other places; and yet certainly any such peculiar custom ought in justice to be held to apply to every single transaction made with a view to it. The custom may be unwise or abstractly unjust, but parties, who make contracts there, will in almost every instance actually have known of the custom and have moulded their agreement to it. The customary law as to what constitutes a seal is in reality but another instance of the kind; and it would be no more unjust for the courts of another State to refuse to adhere, as to a Pennsylvania contract, to the loose rule of Pennsylvania upon that subject, than it is to refuse to adhere to the State law as to the validity of a carrier's stipulation against liability for his negligence. The State rule upon this latter subject has been refused enforcement by the United States Supreme Court, in a New York case;[18] and yet it is by no means impossible that the freight rate charged in that very case was to some extent based upon the assumption of non-liability for loss. The business of modern times is carried on upon such a vast basis, that the probability and average of loss is a large factor in fixing the rate to be charged. The rates of insurance are based upon averages which are arrived at, after taking into account elements quite as small as this; and competition is more than likely to have driven carriers, consciously or unconsciously, into charging a lower rate in such cases, in a State where the stipulation is valid, for the very reason that they exclude their liability. If this is so, it is not short of rank injustice to mulct them in heavy damages, when the unforeseen contingency of suit in another forum arises.

Much of what has been heretofore said applies to the established rule in the federal courts, as well as to its threatened adoption in the State courts. But, if the rule is too well settled in the former to be shaken, there is still time to prevent its adoption in the latter. The two State courts which have en-

[16] See Moores v. Bank, 104 U. S. 625, and cases cited in prior article, p 474.

[17] *Cf.* Williamson v. Berry, 8 How. 495; Suydam v. Williamson, 24 How. 427.

[18] R. R. v. Lockwood, 17 Wall. 357.

forced it have based their ruling on the federal decisions, but it seems that this rests on a misapprehension of their true reason. Story and Taney certainly did not mean to say, broadly, that the rules of commercial law are the same the world over (or in all of our States), or that the common law is the same unvarying mass of rules everywhere. They merely meant that they would not follow the State rules in such cases, on the ground that citizens of other States had other and higher rights, to guard which was the special function of the federal judiciary. This was certainly not generally based on any supposed bias[19] in the State against such citizens, or on any supposed judicial repudiation; but was merely an expression of the effort to amplify their jurisdiction. The members of the "Supreme National Tribunal" found it irksome and thought it *infra dignitatem* for them, in all the plentitude of their power and with their vast abilities, merely to register [20] the decrees of a "local tribunal," and came in time to refuse to do so. Beyond doubt, the future philosophical historian of the Republic will refer these cases—and what a large chapter in his work the Judiciary's record will make!—to that nationalization, which has been so persistent a symptom in our history. People will forever differ whether this has been for good or for evil, but no one can fail to see it; and it does seem to me most apparent that it is the only true explanation of the refusals to apply the State law. Taney must bear a heavy share of the blame in this matter, but the unfortunate doctrine of general principles found its principle cause in the craving appetite of Story for power and distinction, and in his belief in a strong case of nationalization.

If this be true, the federal doctrine furnishes no support whatever to the threatened similar doctrine in the States. The former was a doctrine to be applied only in one special set of tribunals in our very complicated[21] system, while the proposed new doctrine is to be of general application; the courts of each State are in these cases to refuse to enforce the laws of any other, but are to enforce what have been strangely enough called "universal" principles. Yet it is perfectly apparent in each case so far decided, that the principles are limited; and they do not need to be law even in a majority of the States. They have in reality, in the main been enforced, because they were the law of the forum. Should the doctrine become established, the temptation will be very strong for each State to enforce another's law, only

[19] Mr. Heiskell, in his interesting article on "Retrospective Decisions" in 22 Am. L. Rev., p. 523, contends that this was the true reason in Rowan v. Runnels and some other cases. There is, however, nothing in the opinions to show this; and Rowan v. Runnels was not decided until five years after the first great breach had been made in Swift v. Tyson, and been widened in several other cases. There is, of course, equally nothing in the opinions asserting the reason I advance, but expressions could easily be found, which give it countenance. Swift v. Tyson, and a multitude of other cases cannot possible have been decided on the ground of bias, or of judicial repudiation (See Mr. Reno's article, 23 Am. L. Rev. 190) in the State.

[20] In Burgess v. Seligman, 107 U. S. 20, Bradley, J., writes: "It can hardly be contended that the federal court was to wait for the State courts to decide the merits of the controversy and then simply register their decisions, or that the judgment of the circuit court should be reversed, simply because the State court has since [since circuit courts' decision] adopted a different view." And yet this is precisely what the court, under the lead of its great founder, Marshall, always did. See Bank v. Dudley, 2 Pet. 492, where the case was held under advisement, because the court was informed on the argument that the point was pending in the State supreme court; the same judge had remarked in Telfair v. Stead, 2 Cr. 407, that the only doubt was removed by learning how the State court had decided the same question. See also Springer v. Foster, 2 Story, 385, where Judge Story held a case under advisement, exactly as was done in Bank v. Dudley, and see my prior article (pp. 467-471) for other cases more or less similar. Judge Washington wrote that, "the injustice as well as the absurdity of the former (the federal courts) deciding by one rule, and the latter (the State courts) by another, would be too monstrous to find a place in any system of government." (Golden v. Prince, 3 Wash. 313.)

[21] Our system is complicated enough without the introduction of new elements of discord. There is *e. g.* a class of cases, where citizens seek another State's courts, so as to deprive their defendant of the home State's exemption law, and where some curious points have been decided. The cases reported are mainly ones where the defendant is the employee of a railroad running into another State, and where his wages have been successfully garnished in the foreign State after judgment there, though in his own State they are exempt. See *e. g.* Zimmerman v. Franke, 34 Kans. 650, where both parties were citizens of Kansas, and where plaintiff resorted to a Nebraska court, but the Kansas court issued an injunction against his prosecuting the suit there. And see Stark v. Bare, 39 Kansas, 100, where after a somewhat similar device, involving, however, the federal plan of assignment for jurisdictional purposes, had resulted successfully; the defendant sued the plaintiff in Kansas on the ground that he had thus wrongfully deprived him of the benefit of his exemption, and recovered a final judgment. Hager v. Adams, 70 Iowa, 746, is to about the same effect; and see also Wells v. R. R., 74 Ga. 548. Assignments for the purpose here referred to have been a subject of legislation in several States.

so far as the latter enforces the former's. Judges are as human as others, and could not be free from the *ad captandum* nature of an appeal to give only such comity as had been given them.[22] There is already some jealousy felt in the State tribunals at the refusal of the federal courts to enforce State decisions; and the general adoption of the system could only result in great jealousy, and in what can only properly be termed judicial reprisals.[23]

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[22] See this view justified by the dissent in the Pennsylvania case (Forepaugh v. R. R., 24 Weekly Notes, 385) on the subject, which has been decided since this article left the author's hands. The dissenting justice would rule the case on the ground that "comity can require no more of us in any case than the courts of the place of the contract would yield to us for comity's sake."

[23] There is growing to be quite a literature upon the subjects treated in this paper; the following articles are known to the writer: Is there a general commercial law, etc., by Robert G. Street, 12 Am. Law Reg. (N. S.) 473; The Rule in Gelpcke v. Dubuque, by Henry Reed, 9 Am. Law Rev. 381; Conflicts between Federal and State Decisions, by Wm. B. Hornblower, 14 Am. Law Rev. 211; Conflicts between Federal and State Decisions, by Joseph B. Heiskell, 16 Am. Law Rev. 743; Address on Retrospective Legislation delivered before the New York Bar Association at Albany in 1880, by Geo. W. Biddle; Note to Sonstby v. Keely, Am. Law Register, April, 1882, p. 235; Federal Decisions on Questions of State Law, by Wm. M. Meigs, Southern Law Rev. Dec. 1882, p. 452; Retrospective Decisions, by Jos. B. Heiskell, 22 Am. Law Rev. 523; Impairment of Contracts by change of Judicial Decision by Conrad Reno, 23 Am. Law Rev., p. 90; Border Land of Federal and State Decisions by G. W. Pepper, Philadelphia, 1889, T. & W. Johnson.

TAXATION — EXEMPTION — INSTITUTIONS OF LEARNING.

MONTGOMERY V. WYMAN.

Supreme Court of Illinois, October 31, 1889.

A law exempting all property of institutions of learning, including the real estate on which such institutions are situated, from taxation, does not apply, when the property is owned by an individual and when the profits from the school accrue to an individual.

BAKER, J.: Martha L. Wyman and Edward Wyman exhibited their bill of complaint, alleging they were the owners, proprietors and conductors of an institution of learning called "Wyman Institute," located at Upper Alton Illinois, and praying an injunction restraining the collection of the taxes levied for the year 1887 on the real estate upon which said institute was situated and maintained, and on the furniture personal property connected therewith and used exclusively in carrying it on.

Upon the filing of the bill a preliminary injunction was issued. Answer and replication were filed. While the suit was pending in the circuit court the death of Edward Wyman was suggested, and his administrator, George H. Smiley, substituted as a party complainant. The cause was heard upon an agreed state of facts, the deposition of Martha L. Wyman being attached to and considered a part thereof. These facts are sufficiently hereinafter stated in this opinion. The final decree of the court made the injunction perpetual. The claim of appellees is, that the real estate and personal property in question are exempt from taxation. Section 3 of Article IX. of the State constitution provides: "The property of the State, counties, and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery, and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law." In section two of the revenue law it is provided, among other things, as follows: "All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say—*First*—All lands donated by the United States for school purposes, not sold or released, all public school houses, all property of institutions of learning, including the real estate on which the institutions are located, not leased by such institutions or otherwise used with a view to profit." That by the canons of construction all laws excepting property from taxation are to be strictly construed, and all reasonable intendments indulged in favor of the State, and all doubts solved in its favor and against exemptions, goes without saying. The expression "institution of learning" is broad enough to include every description of enterprise undertaken for educational purposes, which is of higher grade than the public schools provided for in the statutes, and is not necessarily limited to either public or incorporated enterprises, or to both. Ordinarily, the word "institution" implies an established and organized society; but here, the words "institution of learning" seem to refer not so much to the society or person or persons in control of the enterprise, as to the institution itself, that is to say, the thing which is established, founded, or instituted. That which is exempt from taxation is the property of the institution of learning, which plainly means the property owned by the institutions. The property of and the property owned by an individual or corporation, as commonly used and understood, mean precisely the same thing. O. & M. Ry. Co. v. Barker, 125 Ill. 303. No matter where the legal title to the property may be vested, it is sufficient for the operation of the statute if the institution is the ultimate or beneficiary owner. Most usually the title is held by the society or corporation which manages and controls the institution of learning but not necessarily so, for there may be no corporation or organized so-

ciety and yet be "an institution of learning" in respect to which the ownership of property, within the true intent and meaning of the law, can be predicated; but, in such case, it would seem, there must be in the nature of things be a trustee or trustees, to hold the legal title to the property in trust for the purposes and objects of the institution of learning. The idea of ownership of property can only be connected with that which we call an institution of learning by means of the interposition of either a society or corporation or a trust. If the title is in the controlling corporation, or if it is vested in a trustee or trustees for the objects to be accomplished through the instrumentality of the institution, in either event the property is, within the contemplation of the statute, the property of the institution of learning. In People v. Anderson, 117 Ill. 50, Anderson owned the lots and erected a meeting house on two of them, and the latter were used exclusively for religious purposes, but the congregation which worshipped there was not incorporated or in any manner organized, and at any time Anderson said proper the congregation might have been excluded from the use of the property, and it was held the property was not exempt from taxation, since church property to be so exempt must be owned by the congregation.

The constitution of the State of Ohio used the expressions "public school houses" and "institutions of purely public charity," and the statutes exempted from taxation: "All public school houses * * * all public colleges, public academies, all buildings connected with the same, and all lands connected with public institutions of learning, not used with a view to profit." In Gerke v. Purcell, 25 Ohio St. 229, it was held that the parochial schools with their play grounds were exempt from taxation; that while they were not "public school houses" in the sense of the constitution, yet inasmuch as they were open to the entire community they were "institutions of purely public charity" within the meaning of the constitution, and that the word "public" as applied in the statute to school houses, colleges, academies and other institutions of learning is descriptive of the uses to which the property is devoted and is not used to describe the ownership of property; but in that case while the bare legal title was vested in Archbishop Purcell, he was not the real owner of the property, but held the same in trust, to be used for parochial school. In the case now under consideration the real estate was all * * * occupied by the institute and, in one sense, devoted exclusively to the purposes and objects of the institution, and the personal property used by and in the institution was all a necessary part and adjunct of the institute, and no part of it was used or employed otherwise than in connection with and for said school. But it is a part of the agreed state of facts that the title to the real estate was in the appellee Martha L. Wyman, and that the same was exclusively and individually her property, and that the personal property was owned jointly by her and her now deceased husband, and that no other person or persons had, at the time of the assessment for taxation, any interest in or title to any of the real estate or personal property, and that after the payment of all the expenses of the school, there remained a surplus or profit from the institution, and that the institute, in addition to said profits, furnished a means of livelihood to appellee Martha L. Wyman and her now deceased husband, Edward Wyman, and that said institute had been in operation for about nine years, and that during that time the complainants in the bill, Edward and Martha L. Wyman, devoted their exclusive attention and all their abilities to it. The deposition of Mrs. Wyman was also made a part of the agreed state of facts, and it appears therefrom that the school was conducted by both the complainants in the bill, that Prof. Wyman managed the educational part of the institute, that Mrs. Wyman furnished her real estate and her attendance upon the home department of the school, that there was no agreement or understanding as to compensation for the services of either, or as to rents or other remuneration for the use of the property, and that Mrs. Wyman had no distinct interest in the profits, but received from the school such support as a wife usually receives from her husband. All property is, under the constitution, primarily subject to taxation. One of the conditions of exemption from such burden under the statute enacted in conformity with the constitution is, that the property connected with an institution of learning, in order to be exempted must be the property of the institution.

Here, all the property involved was the personal, exclusive and absolute property of either Mrs. Wyman, individually, or of her jointly with her husband. The institute had no property right in the premises, either legal or equitable. At any time the Prof. and Mrs Wyman saw fit they had a perfect right to stop the school, exclude the institution from the premises and from the use of the property and close the institute itself. In other words, that which is called "Wyman Institute," although a school and institution of learning of high character was, from a legal standpoint, but private property belonging to the complainants, one or both, and was not only incapable of holding the legal or equitable title to property but neither it nor the lands upon which it was located nor the personality connected therewith were the subjects of a trust which the courts could recognize or enforce, at the instance of the public or of any supposed beneficiary or beneficiaries either natural or artificial.

Our conclusion then, is, that the property described in the bill of complaint cannot be regarded as the property of an institution of learning, and that essential element being absent such property cannot properly be adjudged exempt from taxation. It is also required by the statute, in order that the property should be exempt from taxation, that it should not be "leased by such institutions, or

otherwise used with a view to profit." The constitution, as we have seen, provides that property used exclusively for school purposes may be exempted by general law from taxation. The General Assembly therefore could rightfully exempt only such property as is used exclusively for the attainment of the objects of the institution of learning, and it cannot be understood that the statute is broader in its scope than the constitution itself. The premises in question were all occupied by the institute, and devoted exclusively to the purposes and objects of the institution, and the personal property was a necessary part and adjunct to the institute. But, to conclude from these statements that the property was used exclusively for school purposes, and was not used with a view to profit, would be to stick in the bark. It seems from the record that the "Wyman Institute" is so conducted as that there is an actual profit, but, whether this were so or not is wholly immaterial if only it was conducted "with a view to profit." It appears further, that these profits did not belong to the Institute, but to Professor and Mrs. Wyman, one or both of them owning realty, and the two owning the personalty, and both of them giving their time and services to the institution. It cannot be otherwise than that these profits, whether actual or merely contemplated, grow out of the use of the property upon which the school is located and with, and by which the school is conducted.

It is true, the property is not leased, but the other clause of the statute "otherwise used with a view to profit" embraces within its terms and meaning all ways other than by leasing, in or by which property may be used so as to realize a profit. If these taxes in controversy were abated, the benefits therefrom would be personal benefits to the proprietors of the school, and if they were paid the burden would be borne by them personally. Even if we could assume that in some indirect way the institute gets the benefit of the profits, and thereby would be affected by the payment or non-payment of the taxes, yet, after all, the institute is but a private business enterprise of its proprietors and the ultimate profit or loss is to them. It does not appear it is intended that the institute, or the cause of education shall reap the benefit of any part of these profits, and, if it did, the property should not be within the statute without it further affirmatively appeared the whole of such profits were intended and applied exclusively in furtherance of the purpose of the institution.

It seems to be assured by appellees that the decision of this court in Monticello Seminary v. The People, 106 Ill. 398, is an authority in their favor, and decisive of this case. There are two marked distinctions between that case and this; there Monticello Seminary was a corporation created by a special charter granted in 1843, and the lands involved were the property of that institution of learning, while here the property is the exclusive property of individuals, held in their own right; there, the lands were not used with a view to profit, but used strictly in the carrying on of the seminary and exclusively for that purpose, what was realized over and above actual expenses being used as a fund for the education of indigent females, while here the profits of the school, remaining after the payment of expenses, are retained by the proprietors of the school and owners of the property.

The fact that by section two of the revenue act it is provided that all public school-houses shall be exempt from taxation implies that private school-houses in which are taught, with a view to private profit, the rudimentary branches of education, such as are ordinarily taught in the public schools, are subject to taxation. It is not perceived from the act that it was the legislative intention, while thus leaving schools of this inferior grade, which are maintained for private and personal gain, subject to taxation, at the same time to relieve therefrom schools of the grade of "institutions of learning" which are likewise maintained for private and personal gain and profit, whether maintained by an individual or by a corporation.

No reasonable or just ground for such a discrimination is apparent, nor is it manifest such discrimination is in fact made by the statute. It undoubtedly is the legislative policy to encourage and foster "institutions of learning," thereby affording opportunities for a higher education, and this is done by not limiting the exemption from taxation to such institutions as are public and sustained by the State, but extending it to all "institutions of learning," however managed and controlled, whether by a corporation or by an individual, but subject, however, to the restrictions that the property so to be exempted, shall be owned by the institution and shall not be leased or otherwise used with a view to profit. In order that such property shall be exempt from taxation, it must be dedicated to a use favored by law, and it may thus be dedicated by being owned by an institution of learning which has a corporate existence which authorized it to hold the title to property, or by having the title thereto vested in a trustee or trustees, solely for the uses and purposes of the institution of learning, and in either event it must not be used with a view to profit.

It is not contemplated by the constitution or intended by the statute that property owned by an individual in his or her own right, and used for his or her own gain and profit, or owned by a corporation formed with a view to profits and dividends to be paid to the stockholders, should be free from the burdens of taxation. Such an exemption would be violative of the principle of uniformity and equality of taxation prescribed by the constitution.

In our opinion the circuit court erred in holding that the real estate and personal property described in the bill of complaint were exempt from taxation, in enjoining appellants from collecting the taxes due thereon for the year 1887, and in not

dismissing the bill of complaint. The decree is reversed and the cause remanded with directions to dismiss the bill at the cost of the complainants therein. Reversed and remanded.

NOTE.—The principal case is well sustained by the authorities. While it is conceded, that a State legislature in the absence of constitutional instructions can exempt property from taxation, yet such grants always receive a strict construction.[1] If there is a doubt on the subject, such doubt is resolved against the exemption.[2] In the language of another court immunity from taxation is never recognized, unless it is granted in terms too plain to be mistaken.[3] Judicial construction cannot make the exemptions embrace other property than what is plainly expressed in the law.[4] Where there is a variation in the rulings of the courts it generally proceeds from a different phraseology of the law. Though the law has exempted property from taxation, because it belongs to and is used for a religious benevolent or charitable institution, yet such property is taxable if any part of it is used regularly or occasionally for purposes of gain, though such income is used for the support of such institution.[5] It has been held that all of such property becomes taxable,[6] but other courts allow a division, levying the tax only on that part of the property, from which the revenue is derived, though it is but a part of a house.[7] Under alaw exempting from taxation buildings used exclusively for school purposes, such a building became taxable because the owner thereof and his family lived in part of it, though they were all connected with the school either as teachers or scholars.[8] Under a law exempting a purely public charity, an institution of science, to promote a diffusion of science among the community, but whose benefits are restricted to members except under conditions prescribed by the managers, is taxable;[9] but a library open to all for purposes of reading, which imposes a charge on those taking books away to read, which receipts are used in its support, is not taxable.[10] An educational institution under the control of trustees of a certain religious faith, whose object is to furnish an education as cheaply as possible, the pupils paying for education and boarding in part by fees and their labor, but in which the public, nor any class thereof, has not an absolute right of entry, is taxable under a law exempting all institutions of learning founded, endowed or maintained, by public charity.[11] So a masonic lodge is not a purely public charity and therefor taxable.[12] A law, exempting places of religious worship, does not exempt a parsonage,[13] though the parsonage is erected on the church lot.[14] A statnte, exempting colleges incorporated academies and other institutions of learning, does not exempt buildings erected and used for private unincorporated seminaries of learning.[15] A statute exempting any literary institute does not include a private boarding school,[16] and when public school houses are exempt, only school houses owned by the State are meant.[17] Laws exempting school houses do not refer to orphan assylums, where orphans are maintained and partially educated; they refer only to the public common schools.[18] Such exemptions when allowed are not limited to such an amount of property as may seem necessary for corporate purposes, but extend to all the real estate occupied by it or its officers, and appropriated to those uses by its officers, in the absence of anything to show abuse.[19] Such exemptions are personal and cease with a transfer of the property.[20] Even a sale of the franchise will not carry the exemption, unless the law expressly so provides.[21]

S. S. MERRILL.

1 Cooley' on Taxation, 205; State v. Whitworth, 8 Lea, 594,

2 Morris v. Masons, 68 Tex. 698.

3 Chicago, etc. R. Co. v. Guffey, 120 U. S. 569.

4 People v. Seamens' F. Soc., 87 Ill. 246.

5 State v. Board of Assessors, 34 La. An. 574; State v. Board of Assessors, 35 La. An. 668; Conn. S. Assn. v. Town of E. Lyme, 54 Conn. 152; St. Mary's College v. Crawl, 10 Kan. 442; Wyman v. St. Louis, 17 Mo. 335; Morris v. Masons, 68 Tex. 698; First M. E. Church v. Chicago, 26 Ill. 482.

6 Wyman v. St. Louis, 17 Mo. 335.

7 First M. Church v. Chicago, 26 Ill. 482; Massenbury v. Grand Lodge (Ga.), 7 S. E. Rep. 636; Appeal Tax Court v. Grand Lodge, 50 Md. 421.

8 Red v. Johnson, 53 Tex. 284. *Contra:* Blackman v. Houston, 39 La. An. 592.

9 Delaware C. I. of S. v. Delaware Co., 94 Pa. St. 163.

10 Donahugh's Appeal, 86 Pa. St. 306.

11 Shiel Collega v. Mercer Co., 101 Pa. St. 530.

12 Bangor v. Masonic Lodge, 78 Me. 428.

13 St. Mark's Church v. Brunswick, 78 Ga. 541.

14 Third Cong. Soc. v. Springfield, 147 Mass. 396.

15 Chegary v. Mayor of New York, 13 N. Y. 220.

16 Indianapolis v. McLean, 7 Ind. 328.

17 Gerke v. Purcell, 25 Ohio St. 229.

18 Assn. for Colored Orphans v.New York, 104 N. Y. 581.

19 Mass. Gen. Hosp. v. Somerville, 101 Mass. 319.

20 New Haven v. Sheffield, 30 Conn. 160; Wilson v. Gaines, 103 U. S. 417; State v. Whitworth, 8 Lea, 594.

21 Com. v. Masonic Temple Co. (Ky.), 8 S. W. Rep. 699; Morgan v. Louisiana, 93 U. S. 217; Wilson v. Gaines, 103 U. S. 417.

CORRESPONDENCE.

To the Editor of the Central Law Journal:

Referring to "Answer to Query No. 4," which appeared on page 376 of the current volume of the JOURNAL, I desire to say that if your correspondent saw any such statement published in a newspaper as you claim, it was untrue. The only case of libel involving the question of what is a newspaper, or, in other words, is an "extra" a newspaper, within the meaning of the libel law of Michigan and Minnesota, that has been tried in this vicinity, was a case in our local court, in which I was one of the attorneys. That case was tried, and the court ruled that the particular "extra" was not a newspaper, within the meaning of the law; but such decision was based upon the particular facts of the case, and was not a ruling upon the question "what constitutes a newspaper?" The trouble that I ran against in the trial of the case was that the plaintiff was able to prove that the alleged "extra" was nothing more than a political hand-bill; that it was issued at the dictation of a campaign committee, containing no item of news, simply discussed the fitness of the various candidates for office, and contained statements of and regarding the plaintiff that were undoubtedly libelous, and was not circulated as newspapers usually are, but was given in large quantities to the campaign committee ordering the same, and circulated like ordinary hand-bills, distributed about the streets by boys. Therefore, you see, that no court, at least in this vicinity, has passed upon the question, but I think it is safe to say that, under the particular circumstances of this case, the publication was not a newspaper. While investigating the question of "what constitutes a newspaper," within the meaning of the Minnesota and Michigan libel law, I came across some very interesting decis-

ions, and from my investigations I have no doubt whatever that an "extra," no matter what its size, even though in the shape of a hand-bill, and whether it contains much or little news, if in truth and in fact an "extra" of a newspaper, is, within the libel law, a newspaper. To constitute a newspaper, it is requisite: 1st. That it is a *bona fide* publication for everybody's use. 2d. That it is published in numbers with regularity. 3d. That it contains news, whether legal, political, religious or otherwise, if not exclusive. 4th. That it is in sheets of cheap form. However, such publication, to constitute a newspaper, need not be necessarily regular, for if so, an "extra" would not be a newspaper. See upon this point, 4 Opin. Atty.-Gen. 10, which is an interesting case defining a newspaper within the meaning of the postage law. See also the following cases, which are of interest, and from which it will appear that to constitute a newspaper the four requisites named above must exist. Kellogg v. Carrico, 47 Mo. 157; Harnandez v. Drake, 81 Ill. 34; Curr v. Hill, 75 Ill. 51; Anderson's Law Dict. tit. Newspaper.

M. B. WEBBER.

Winona, Minn.

RECENT PUBLICATIONS.

A TREATISE ON THE LAW RELATING to Executors and Administrators. By Simon G. Croswell, Editor of Greanleaf on Evidence, Washburn on Real Property, Washburn on Easement and Servitudes, and Author of a Collection of Patent Cases. Boston. Little, Brown & Company. 1889.

Outside of the fact that there have been published within recent months, a good many works on subjects pertaining to administration of estates, there is no reason why this book should not have deserved success. It is certainly well conceived. Indeed, in point of systematic and general arrangement of subjects and topics, we know of no book on the subject, which excels it. It grieves us to read a book which plunges into the subject right at the middle and works towards both ends. This book starts with jurisdiction of probate courts and the appointment of executors and administrators, and follows logically through the entire subject, embracing nothing that is germane and omitting nothing that is of value. The style of the author is terse and to the point. He uses no more words than are necessary and hence the text of the book is not very large, embracing only about six hundred pages. There is appended a digest of the statutes of the different States, to which the text from time to time refers. The notes contain copious and accurate references to the authorities, and the book is well indexed. It is needless to say that, in point of mechanical execution, it is without criticism, inasmuch as its publishers are Little Brown & Co.

QUESTIONS AND ANSWERS to Anson on Contracts, including an Analysis of Each Division of the Law of Contracts. By James R. Jordan (Librarian of the Law School of the Cincinnati College). W. H. Anderson & Co., Law Publishers. Cincinnati: 1890.

We can see wherein this little book of nearly two hundred pages will be of great value to students of the law. And when we say students, we mean as well practitioners who are students (and all ought to be) as technical students. It contains the subject of Anson on Contracts, a work of great merit, boiled down into the shape of eight hundred hnd seventy-nine questions and answers, all bearing on the vital incidents and accompaniments of a contract. Anson on Contracts has been chosen as the basis of this book, because it contains in a brief and comprehensive manner the principles of the law of contracts, leaving out all that is not essential and that which might confuse beginners. An analysis of "Anson on Contracts" has been inserted which the student will find to be a valuable help. The book is carefully indexed and is well printed and bound.

A TREATISE ON THE LAW OF TRUSTS AND TRUSTEES, by Jairus Ware Perry. Fourth Edition, embodying relevant cases down to date. By Frank Parsons. In two Volumes. Boston: Little, Brown & Co. 1889.

Every practitioner knows or ought to know of this masterly work of Jairus W. Perry. It made its appearance first in 1871, and has passed through three editions, this being its fourth. It has been and is today regarded by practitioners and the courts as the standard authority upon the subject of Trusts and Trustees. It is much to be regretted that by Mr. Perry's untimely death, at an age when some of the best work might reasonably have been expected from him, we lost the ripe points of study and thought which he was constantly giving to the subjects of which his book treats. However, the work of the editor, Mr. Frank Parsons, seems to have been conscientiously done. It consists principally in the addition of about a thousand new cases which have appeared since the last edition. The editor says, that every case inserted in this edition has been carefully examined by him in person, and it has been his effort throughout to put no work upon the book that would not be in keeping with its high character. Many practitioners will regret the absence, from the beginning of the sections, of the usual catch words or sentences, in large type indicating their scope. This omission is the more serious because each chapter contains many sections, most of them short, and it is only by turning back to the beginning of the chapter that one can readily find the subject of the sections. This, of course, in no measure detracts from the real value of the book, which in truth, cannot be overstated.

BOOKS RECEIVED.

THE AMERICAN STATE REPORTS, Containing the Cases of General Value and Authority, Subsequent to Those Contained in the "American Decisions" and the "American Reports," Decided in the Courts of Last Resort of the Several States, Selected, Reported, and Annotated By A. C. Freeman and the Associate Editors of the "American Decisions." Vols 9. San Francisco: Bancroft Whitney Company, Law Publishers and Law Booksellers. 1889.

TEN THOUSAND A YEAR. By Samuel Warren, F. R. S., with the author's notes, elucidating the legal incidents of the story. Boston: Little, Brown & Co. 1889.

QUERIES AND ANSWERS.

QUERY NO. 29.

N, an unmarried man, is intimate with H, a married woman, who has lived apart from her husband five years. N begets H with child, which is born about two months after the accidental death of N. During N's life-time and while H is pregnant by him, and about three months before the birth of the child,

N writes friendly letters to H, in which he speaks of their getting married, their future home and of "baby," and otherwise alludes to her pregnancy and the baby. Would such facts constitute such a recognition of the child by him as to entitle it to inherit N's estate? Can a person in writing, recognize. under the Kansas statute, his reputed illegitimate child before its birth so as to entitle it to an inheritance of his estate? G. & L.

QUERY NO. 30.

A, living in Kansas, insures his house with a company organized and incorporated under the laws of Illinois. A insures, intending to remove from Kansas. The policy of insurance contains the following clause: "If the premises become vacant or unoccupied * * * this policy shall be void." A then leaves his house under the care and supervision of a neighbor, who promises to look after it, and removes with his family, leaving his house unoccupied and vacant. After leaving and before expiration of his policy the house is destroyed by fire. Now, I know, of course, the g neral rule, but would like to know whether the insurance company is liable under the laws of Kansas? Please cite authorities, including the Kansas statute, if any there be covering the question. W. B.

QUERY NO. 31.

A, a female, was born in Arkansas, where her parents were domiciled at their death. After their death and during her infancy, about three years ago, she was taken by a friend to California, to reside with her uncle, who was domiciled there. He was appointed her guardian in that State, and she has ever since resided with him. There was no guardian in Arkansas. In Arkansas, a woman is of full age for all purposes at eighteen; in California, at twenty-one. She is now over eighteen, but under twenty-one. The administrator in Arkansas wishes to know to whom he should pay her distributive share of her mother's estate. X.

QUERIES ANSWERED.

QUERY NO. 18.

[*To be found in current volume, p. 316.*]

The best thing for "I" to do is to offer a reward for the best and most satisfactory solution of the question. No one, without a chance for compensation, would undertake to solve so complicated a puzzle. M.

QUERY NO. 21.

[*To be found in current volume, p. 396.*]

It seems to be admitted by the facts that the warranty deed from A to B was made in fraud of creditors, and that this purpose was fully participated in by B, the grantee. This being so, the deed is absolutely void. Martindale on Conveyancing (2d ed.), 46, and cases cited. This deed being set aside, the mortgage held by B on A's land to secure the $1,000 will still be in force, not being tainted with fraud, and B may thereby obtain his money. X.

QUERY NO. 22.

[*To be found in current volume p. 396.*]

This case, on its statement, is so plain that it hardly needs the citation of any authorities. A is certainly not obliged to give up the interest asked for as a rebate. The note was not due for a year, and if the banker or his assignee chose, for the sake of getting the securities to pay it before maturity, it was a concession on A's part to permit it, and he can no more be legally called upon to give up the five months' interest than the seven months during which A had the use of the money. D.

QUERY NO. 23.

[*To be found in current volume, p. 396.*]

The doctrine has become established that a marriage, good at the common law, is good, notwithstanding the existence of any statute on the subject, unless the statute contains express words of nullity. Directory provisions of the statute, though prohibitory, and even penal with respect to the officers, have not been regarded as affecting the validity of a marriage otherwise legal. Bishop on Marriage and Divorce, §§ 283, 284. This marriage, provided the justice of the peace had authority, was certainly valid. M.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

1. ACTION—Surviving Partner.—Where an action has been commenced in the name of persons who had previously been partners, and one of the partners was dead when the suit was commenced, it is proper in Michigan to allow the other, by amendment, to declare as surviving partner, and in such action plaintiff may recover for all work done in completion of a job undertaken by the partnership, and partly performed before the other partner died.—*O'Connell v. Schwanabeck*, Mich., 43 N. W. Rep. 599.

2. ADMIRALTY—Jurisdiction.—Admiralty will refuse to take jurisdiction of a libel for personal injuries inflicted by the master of a foreign vessel on a foreign seaman while on the high seas, where the relations of libelant to the ship have been settled by his and respondent's consuls.—*Camille v. Couch*, U. S. D. C. (S. C.), 40 Fed. Rep. 176.

3. ADVERSE POSSESSION.—In ejectment, where there is testimony showing that plaintiff and his grantors had cultivated a portion of the land in dispute for over 20 years, and that from another portion they had occasionally cut wood and timber, and that they had maintained a fence separating such tract from the lands of the defendant, it is a question for the jury whether such testimony is sufficient to uphold a claim of title by adverse possession.—*Barnes v. Light*, N. Y., 22 N. E. Rep. 441.

4. ADVERSE POSSESSION.—The possession of a vendee of a life-tenant is not adverse to at of the rever-

sioner during the life of the tenant for life, and until his death such possession is not sufficient to set the statute of limitations in motion, though such vendee claims to own the land in fee.—*Mettler v. Miller*, Ill., 22 N. E. Rep. 529.

5. APPEAL—Evidence.—Under Rev. St. Ill. 1889, c. 110, § 88, which makes the judgment of the appellate court final as to all matters of fact in controversy, a decision of the appellate court that, when a check was presented at a bank, the bank had funds of the drawer sufficient for its payment, cannot in the absence of exceptions to the admission or rejection of testimony, be questioned in the supreme court, though there was no conflict in the evidence.—*American Exch. Nat. Bank v. Chicago Nat. Bank*, Ill., 22 N. E. Rep. 523.

6. ARBITRATION AND AWARD.—Defendant, having a contract to build part of a certain railroad, let the contract to do a portion of the work to plaintiff, and it was mutually agreed that plaintiff was to be paid when the chief engineer of the railroad furnished defendant with a certificate that the work had been done according to the contract, together with an estimate of the various kinds of work done by plaintiff, which estimate was to be binding upon both parties, and to determine the amount due plaintiff. The estimate when made was free from fraud, and from mistakes upon its face. *Held*, that it was binding upon the parties, though the chief engineer did not personally measure the work, and refused to hear the testimony of witnesses to contradict the estimates furnished by his subordinates who did make such measurements.—*Sweet v. Morrison*, N. Y., 22 N. E. Rep. 276.

7. ATTACHMENTS—Interplea.—Rev. St. Ill. c. 11, § 29, which allows claimants of attached property to interplead in the attachment suit, applies as well to real as to personal property. An interplea under said statute is not demurrable because filed after judgment has been rendered against the defendant in attachment.—*Juilliard v. May*, Ill., 22 N. E. Rep. 477.

8. ATTACHMENT AGAINST VESSEL.—The proceeding under the Illinois Water Craft Act is not an admiralty suit *in rem*, but a common-law action *in personam* against the owner and his sureties, aided by a lien on the vessel, and is within the jurisdiction of the State courts.—*Gindele v. Corrigan*, Ill., 22 N. E. Rep. 516.

9. CARRIERS—Goods.—A carrier who has negligently delivered goods to a vendee of the shipper, without collecting the purchase money, as should have been done, or requiring the production of the bill of lading, cannot recover them of a *bona fide* purchaser from such vendee.—*Norfork Southern R. Co. v. Barns*, N. C., 10 S. E. Rep. 83.

10. CONFUSION OF GOODS.—In an action to replevy some staves alleged to have been made from trees cut on plaintiff's land which defendant had mingled with other staves, it is not necessary for plaintiff to show that the particular staves seized by the sheriff were made from trees cut on her land.—*Peterson v. Polk*, Miss., 6 South Rep. 615.

11. CONTRACT—Novation.—Defendant contracted to deliver to plaintiff a certain number of ponies, on or before a date stated. Plaintiff gave W an order on defendant as follows: "Please deliver to W, or order, 30 head of ponies, on or before July 15, 1886, and charge the same to our contract. I also agree that, on failure of delivery of any or all, the price to be paid the deficiency shall be $35 per head." *Held*, that the acceptance of this order by defendant did not effect a novation of the contract, nor release his liability to plaintiff thereunder.—*Black v. De Camp*, Iowa, 43 N. W. Rep. 625.

12. CONTRACT—Agency.—In an action for the breach of a contract made by vendor's agent for the delivery of certatin goods, and giving the vendee the exclusive right to sell the goods in a certain territory, where there is evidence that it was the custom in that line of trade for agents to give dealers the exclusive control of certain territory, the question whether vendor's agent had authority to make such contract should have been submitted to the jury.—*Kaufman v. Farley Manuf'g Co.*, Iowa, 43 N. W. Rep. 612.

13. CONTRACT—Wages.—In an action against a corporation for services, evidence of plaintiff's previous employment by a person who was running the business before the organization of the corporation is not admissible to show the agreement by defendant as a compensation by showing that it was to be the same as under the former employment, where that is still in dispute between the parties thereto.—*Ganther v. James Jenks & Co.*, Mich., 43 N. W. Rep. 600.

14. CONTRACT—Sale.—An agreement in the form of a consignment for sale, by which the consignees, who agree to pay freight and insurance charges, are allowed to sell the goods at prices fixed by themselves, retaining the difference between the invoice price and the selling price as their commission, and to discharge themselves from any further obligation as to the goods by paying the negotiable note given for the goods, and called an "advance," is, as against the consignee's execution creditors, a sale, and not a bailment.—*Chickering v. Bastress*, Ill., 22 N. E. Rep. 542.

15. CONTRACT IN WRITING.—A writing that one person has bought goods from another, describing the goods and giving the price and the conditions of the sale, though signed only by the purchaser, is a "simple contract in writing," within the meaning of the statute of limitations.—*Ames v. Moir*, Ill., 22 N. E. Rep. 535.

16. CORPORATIONS—Taxation.—The consolidation of the rights, privileges, franchises, and properties of two or more railroad companies in one where there is no provision of the statute or constitution to the contrary, leaves the portions of the road thus formed subject to the same rules of taxation that existed before the consolidation,—*State v. Keokuk & W. Ry. Co.*, Mo., 12 S. W. Rep. 290.

17. CORPORATIONS—Fraudulent Assignment.—A vote of the directors of a corporation authorizing, for the purpose of securing certain creditors, a chattel mortgage on all the company's property to be given to a trustee, reserving to the company the right to sell its goods and manufactures in the ordinary course of business, does not authorize a clause in the instrument giving the trustee the power to take possession, if he should deem himself insecure; to continue the business of the corporation; to buy new stock and material; to complete manufactures; to dispose of the property, and out of the proceeds to pay certain debts, and turn over the surplus to the corporation.—*Kendell v. Bishop*, Mich., 43 N. W. Rep. 645.

18. CORPORATIONS—Partnership.—Pub. Acts Mich. 1881, No. 24, amending Pub. Acts 1875, No. 187, so as to include corporations for mercantile business, being void, an association under its provision, each member sharing in the profits and losses of the business in proportion to the money he has put into the capital stock, will not constitute the parties thereto a corporation *de facto*, and their carrying on business in the corporate name is not evidence of user which can be considered in aid of their legal existence; but they are liable as partners for debts contracted by them.—*Eaton v. Walker*, Mich., 43 N. W. Rep. 638.

19. CORPORATIONS—Stockholders.—The rights of a holder of a certificate entitling him to a paid-up interest in a corporation, which has been recognized on its records, which is non-assessable, and which has never been surrendered, cannot be barred by laches until they are repudiated by the corporation, as the latter is a trustee for the certificate holder.—*Kobogum v. Jackson Iron Co.*, Mich., 43 N. W. Rep. 602.

20. CORPORATE EXISTENCE.—The charter of the Ladies of the Sacred Heart named no limitation to its corporate existence. It stated the purpose of the corporation to be to conduct a seminary of learning and an orphan asylum, and provided that it "by that name and style shall have succession." The charter, also, was specific in its grant of powers. The institution was purely a charitable one. *Held*, that the corporate existence of

the Ladies of the Sacred Heart was not limited to 20 years, but was made perpetual, notwithstanding Rev. St. Mo. 1845, c, 34 § 1 par. 1.— *State v. Ladies of the Sacred Heart*, Mo., 12 S. W. Rep. 292.

21. COVENANTS—Married Woman.—Rev. St. Mo. § 669, provides that "a husband and wife may convey the real estate of the wife by their joint deed; but no covenant expressed or implied in such deed shall bind the wife or the heirs, except so far as may be necessary effectually to convey from her and her heirs all her right, title, and interest expressed to be conveyed therein." *Held*, that said section does not invalidate a covenant executed by a married woman conveying her separate estate in equity. — *Barlow v. Delaney*, U. S. C. C. (Mo.,) 40 Fed. Rep. 97.

22. CREDITOR'S BILL.—Where a judgment debtor dies after service of process on creditor's bill, the judgment creditor's lien upon the deceased's interest in partnership assets in the hands of a receiver appointed in another suit is superior to the claim of the widow for her award.—*King v. Gooding*, Ill., 22. N. E. Rep. 533.

23. CRIMINAL LAW—Murder.—On an indictment for the murder of a policeman, who was attempting to arrest defendant for an alleged offense, it being alleged that deceased was trying to strike defendant when the latter fired the fatal shot, a charge that an officer has no right to strike a person whom he is trying to arrest, should be refused, when not qualified by any statement of the right of the officer to use the force necessary to prevent the escape of a criminal.—*People v. Carlton*, N. Y., 22 N. E. Rep. 257.

24. CRIMINAL LAW—Perjury.— Defendant was indicted for perjury. The evidence showed that he made a verbal statement before a United States commissioner, and charged one B with violating the revenue law. The commissioner reduced his statement to writing, beginning with the words, M, "being duly sworn," etc., and ending with the jurat. On being told, "If you swear to this statement, put your mark here," defendant made his mark: *Held*, that this was an oath.— *United States v. Mallard*, U. S. D. C. (S. Car.), 40 Fed. Rep. 151.

25. CRIMINAL LAW — Assault. — An indictment under § 792, Rev. St., which charges that the accused "did willfully, feloniously, and of his malice aforethought, with a dangerous weapon, to-wit, a gun, assault one Coleman Franklin with intent then and there to murder," is sufficient, and covers the offense of an assault with an intent to murder. The words "with a dangerous weapon" are surplusage. It was unnecessary to set out the manner in which the assault was made. — *State v. Smith*, La., 6 South. Rep. 623.

26. CRIMINAL PRACTICE—Trial.— A defendant on trial for murder, who, of his own motion, and without persuasion or promise on the part of the prosecution, enters a plea of guilty, is properly refused permission to withdraw his plea and enter a plea of not guilty after verdict and assessment of the maximum punishment, on the ground that the prosecution was permitted to prove the circumstances of the killing, where he did not then move to withdraw his plea, though Crim. Code Ky. § 174, provides that a plea of guilty may be withdrawn, and a plea of not-guilty substituted "at any time before judgment." — *Mounts v. Commonwealth*, Ky., 12 S. W. Rep. 311.

27. CRIMINAL PRACTICE— Joinder of Counts.—A count charging a conspiracy to induce a female to commit fornication may be joined in the same indictment with counts charging defendants with abduction of the same female for the purpose of prostitution, and with unlawfully detaining her in a house of ill fame, though the first count charges a misdemeanor, and the others a felony.—*Herman v. People*, Ill., 22 N. E. Rep. 471.

28. CRIMINAL PRACTICE — Speedy Trial. — The trial of several defendants, jointly indicted for murder, was at the second term at which they might have been tried, severed at the request of one defendant. The trial of the others, which was at once begun, not being finished at the end of the term, the trial of the other defendant was continued: *Held*, that the delay having been caused by his own act, such defendant was not entitled to be released under Rev. St. Ill. 1889, ch. 38, § 488, discharging from custody prisoners not tried at the second term of the court, "unless the delay happen on the application of the prisoner."—*People v. Matson*, Ill., 22 N. E. Rep. 456.

29. CRIMINAL PRACTICE—Separate Trials. — Where a complaint containing two counts is filed against two defendants, one of whom is found guilty upon both counts, and the other is acquitted upon the first count, the right of the latter to a separate trial upon appeal to the superior court is within the discretion of the court. —*Commonwealth v. Miller*, Mass., 22 N. E. Rep. 434.

30. DAMAGES— Personal Injuries. — The law does not contemplate absolute, but only a qualified or relative, compensation in damages for personal injuries resulting in the loss of a limb, there being no money equivalent for such injuries.—*Western, etc. R. Co. v. Young*, Ga., 10 S. E. Rep. 197.

31. DEED—Constructive Notice. — Under Rev. St. Ill., ch. 30, § 30, providing that deeds shall take effect only after recording, as to all subsequent purchasers without notice, a decree in the probate court for the sale of land in that county, and the report of the administrator that he had made the sale, do not amount to constructive notice of an unrecorded administrator's deed, as against a subsequent *bona fide* purchaser from the heirs. —*Anthony v. Wheeler*, Ill., 22 N. E. Rep. 494.

32. DEED—Admissions.—The grantee who accepts and puts on record a quitclaim deed, which recites that the grantor has formerly conveyed the land to a third person, and that the quitclaim deed is made to clear away certain objections to the other deed, thereby admits that he claims title through his grantor's former grantee.—*Sawyer v. Campbell*, Ill., 22 N. E. Rep. 453.

33. DIVORCE — Desertion. — An action for divorce on the ground of desertion cannot be maintained by a husband when it appears that the wife left him because of the inhuman treatment to which she was subjected. —*Doolittle v. Doolittle*, Iowa, 43 N. W. Rep. 616.

34. DIVORCE—Defenses. — In an action for divorce on the ground of cruel and inhuman treatment, defendant may plead as a defense that plaintiff is guilty of adultery.—*Hubbard v. Hubbard*, Wis., 43 N. W. Rep. 655.

35. DOWER—Allowance.—Whether a widow who elects to take, in lieu of dower, an amount in money to belong to her absolutely, surrenders thereby all interest in the rents and profits of her deceased husband's realty, as well as in the realty itself, is not now for decision. — *Johnson v. Moon*, Ga., 10 S. E. Rep. 198.

36. DRAINAGE.—Rev. St. Ill. 1889, ch. 121 § 8, which authorizes highway commissioners to open ditches on private land adjoining a highway "whenever it shall be necessary," and provides that, unless the owner shall consent thereto, the commissioners shall apply to a justice of the peace to have the damage assessed, is not in conflict with Const. Ill. art. 2 § 13, which forbids the taking of private property for public use without just compensation, since the damage mentioned in the statute includes the value of the land taken, as well as the injury to the land adjacent. — *Chaplin v. Highway Com'rs.*, Ill., 22 N. E. Rep. 484.

37. EMINENT DOMAIN.—Under article 156 of the constitution, providing that "private property shall not be taken nor damaged for public purposes without just and adequate compensation first paid," it is not necessary to establish an actual trespass or physical taking of the property itself. It suffices if the property has been substantially damaged by the public work.—*Griffin v. Shreveport, etc. R. Co.*, La., 6 South Rep. 624.

38. ESTOPPEL.—A maker of a note who, when requesting a third person to purchase the note, and extend the time of payment, represents that there is a certain amount due upon the note, is estopped to deny the representation after the other has purchased it. — *Caster v. Byers*, Ill., 22 N. E. Rep. 507.

39. EVIDENCE—Res Gestæ.— The plaintiff, a passenger upon a railway, who left the train late at night, and in

so doing (as he alleges) was injured by a fall which broke his leg, having pulled off his coat, detached his suspenders, bound up his broken limb, crawled through a culvert from one side of the railway to the other, seated himself on the cross-ties, and cried for help, his account of the manner of his leaving the train and receiving the injury, given to a person who reached him about half an hour after first hearing his cries, was no part of the *res gestæ*, and, being mere narrative of a past event, was not admissible evidence in his own behalf.—*Savannah, etc. Ry. Co., v. Holland*, Ga., 10 S. E. Rep. 200.

40. EXECUTION—Sale.— A sale of land under an execution issued and levied after the death of the debtor on a judgment rendered against him during his life-time is voidable.—*Cain v. Woodward*, Tex., 12 S. W. Rep. 319.

41. EXECUTION SALE — Redemption. — Under Rev. St. Ill. ch. 77, § 16, a court of chancery has no power, on creditor's bill against a corporation, to order the defendant's property, consisting of coal mines, and personal property used in mining, to be sold by its receiver as a unit, without right of redemption, though the property would command a better price if so sold, and though ceasing to work the mines during the period of redemption would materially lessen their value.—*Locey Coal Mines v. Chicago, W. & V. Coal Co.*, Ill., 22 N. E. Rep. 503.

42. FALSE REPRESENTATIONS. — Where one, being a director of a corporation, with ordinary prudence could have known the condition of the company's affairs he cannot complain of false representations in the sale to him of its stock.—*Powell v. Adams*, Mo., 12 S. W. Rep. 295.

43. FEDERAL COURTS— Witness. — Witnesses residing in the district, who attend court in obedience to a subpœna, are entitled to mileage fees for the whole distance necessarily traveled in going to and returning from the place where the court is held, though it exceeds 100 miles.—*Sims v. Schultz*, U. S. C. C. (Mo.), 40 Fed. Rep. 143.

44. FRAUDULENT CONVEYANCE.—The mere fact that in a sale of all its assets made by an insolvent partnership there is an agreement by the purchasers to employ one of the partners at a stipulated compensation per month to manage the business, will not *per se* render the sale void as against creditors. If there was no intention to defraud, delay, or hinder the creditors, and if the sale was for full value above and beyond the agreement for employment, the transaction was valid. —*Cribb v. Bagley*, Ga., 10 S. E. Rep. 194.

45. GAMING—Futures.— One who has deposited money with another, to be used in a speculation upon chances, or the purchase of "futures," has no right of action to recover it back until after demand for its return or repayment.—*Dancy v. Phelan*, Ga., 10 S. E. Rep. 205.

46. GARNISHMENT—Joint Interest.—Insurance policies in which defendant only has a joint interest, and which came into the hands of the garnishee as the collateral security of the other joint owner, cannot be subjected to the payment of a judgment against defendant without making such joint owner a party. — *Kennedy v. McLellan*, Mich., 43 N. W. Rep. 641.

47. GUARDIAN AND WARD. — Probate courts having, under Rev. St. Ill. ch. 64, §§ 24, 25, jurisdiction to authorize a guardian to mortgage his ward's land, a mortgage executed under such a decree warrants the guardian in paying the debts to satisfy which the mortgage was ordered, and also the interest on the mortgage debt, so long as such decree, though possibly erroneous, remains unreversed. — *Kingsbury v. Powers*, Ill., 22 N. E. Rep. 480.

48. GUARDIAN AD LITEM.—In Mississippi, the court has no power to appoint a guardian *ad litem* for minor defendants, unless it is first made to appear that they have no mother or guardian in the State. — *Frank v. Webb*, Miss., 6 South. Rep. 620.

49. HIGHWAYS.— Under Laws Wis. 1887 ch. 454, amending Rev. St. Wis. § 1249, a town is not liable for injuries sustained by a person from defects in a road temporarily provided over a field adjoining a highway, during its obstruction by snow drifts. — *Bogie v. Town of Waupun*, Wis., 43 N. W. Rep. 667.

50. HOMESTEAD—Mortgage. — Const. Tex., art. 16, § 50, protects the homestead from forced sale for the payment of all debts, and provides: "Nor shall the owner, if a married man, sell the homestead without the consent of the wife. No mortgage, trust-deed, or other lien on the homestead shall ever be valid," whether "created by the husband alone, or together with his wife:" *Held*, that this does not render void a deed of trust executed by an unmarried man on his homestead. —*Lacy v. Rollins*, Tex., 43 N. W. Rep. 314.

51. HOMESTEAD. — Defendants, husband and wife, lived with their son on certain premises, and had no other home. At his death they inherited the premises, and continued to live there, with the intention of making it their home, unless it should be sold. They finally left, because of trouble with plaintiff, who was living with them, and not from a desire or purpose to abandon the premises as a home: *Held*, that the premises were defendants' homestead, and specific performance would not be decreed of a contract to sell the premises, executed by the husband alone, several months before they left.— *Woolcut v. Lerdell*, Iowa, 43 N. W. Rep. 609.

52. INJUNCTION — Res Adjudicata. — An injunction granted to restrain defendant from maintaining a nuisance by keeping a place for the unlawful sale of intoxicating liquors, though not enforced, is a bar to a second action by another plaintiff seeking the same relief.—*Dickinson v. Eichorn*, Iowa, 43 N. W. Rep. 620.

53. INJUNCTION—Taxation.—A bill in equity will lie to enjoin the collection of taxes levied and sought to be collected without authority of law. — *City of Meridian v. George*, Miss., 6 South. Rep. 619.

54. INSANITY — Inquisition. — In an inquisition of lunacy, a finding by the jury that the person alleged to be insane had been of unsound mind for several years is incidental merely and not conclusive as to the validity of a deed executed within that time.—*Hughes v. Jones*, N. Y., 22 N. E. Rep. 446.

55. INSOLVENCY— Priorities. — An action to determine the priority of the claims of various creditors of an insolvent is an equitable proceeding, and its character is not changed by the fact that the issues presented grew out of attachment and garnishment proceedings. — *Shaver Wagon Co. v. Halsted*, Iowa, 43 N. W. Rep. 623.

56. INSURANCE — Reformation. — The proof held not sufficiently clear and convincing that the contract was one for an insurance of plaintiff's interest, separate from and independent of the vendee's interest, to warrant a reformation of the policy to that effect, even though the agent had authority to make it.— *Meiswinkel v. St. Paul Fire Ins. Co.*, Wis., 43 N. W. Rep. 669.

57. INSURANCE—Conditions. — Under a fire insurance policy stipulating that the company should not be liable for loss occurring while any note of the premium remained past due, insured cannot recover where such unpaid note existed at the time of loss, and he immediately afterwards paid and the money was returned to him. — *Robinson v. Continental Ins. Co.*, Mich., 43 N. W. Rep. 648.

58. INSURANCE—Conditions.— The fact that an insured house has become vacant, and that the policy of insurance contains a clause making it void in event of such vacancy, is not sufficient, in a suit upon a subsequent policy, to show that the first policy has become void, without proof that the company had elected to hold the policy void. — *Germania Fire Ins. Co. v. Klewer*, Ill., 22 N. E. Rep. 489.

59. INTOXICATING LIQUORS— Minors. — An instruction that Code Ga. § 4540, makes all people connected with the sale of liquor to minors responsible whenever a minor is furnished therewith without written authority, and it matters not whether the proprietor knew the facts and consented to it, and his offense is complete if the liquor was sold to the minor by any one acting in

his place of business, is incorrect, as the section covers only sales by a person, through himself or another, and does not cover sales by those in his employ without his permission. — *Johnson v. State*. Ga., 10 S. E. Rep. 207.

60. INTOXICATING LIQUORS — Nuisance. — McClain's Code Iowa 1888, § 2389, relating to intoxicating liquors, which provides that, if the existence of a nuisance is established in either criminal or civil proceedings, it shall be abated under judgment of the court, and that the fixtures, furniture, etc., used about the premises for the manufacture or sale of liquors, shall be removed and sold, is not in conflict with Amend. Const. U. S. arts. 4, 14, and Const. Iowa, art. 1, §§ 8, 9, relating to the rights of property. — *Craig v. Werthmueller*, Iowa, 43 N. W. Rep. 606.

61. INTOXICATING LIQUORS. — The fact that defendant in a complaint charging the keeping of a nuisance in a certain "tenement," by selling liquors, occupied one room as a shop and another as a living room or kitchen, does not require the commonwealth to elect in which one of the rooms was the tenement. —*Commonwealth v. Clynes*, Mass., 22 N. E. Rep. 436.

62. INTOXICATING LIQUORS—Minor.—On a prosecution for selling liquor to a minor, where the commonwealth relied on a sale made by defendant's bar-tender, an instruction that he must be acquitted unless his knowledge and consent to the general violation of the law by his servant was shown was properly refused, as knowledge or consent in the particular instance was all that was necessary. — *Commonwealth v. Rooks*, Mass, 22 N. E. Rep. 436.

63. JUDGMENT—Collateral Attack. — Where land has been sold on execution under a domestic judgment the judgment debtor cannot, in a collateral proceeding, and against a *bona fide* purchaser, seek to impeach the sheriff's return of service of summons in the original action and the recitations of the judgment.— *Walker v. Cronkite*, U. S. C. C. (Kan.), 40 Fed. Rep. 133.

64. JURY — Qualifications. — A juror was called who, upon his *voir dire* examination, testified that he had such an opinion as to the guilt or innocence of the accused as would take considerable evidence to remove; that if what he had heard was true he was prejudiced; that he could not say whether he could sit as a fair and impartial juror and render an impartial verdict upon the evidence and law or not; that he had formed a pretty strong opinion about the case. It was held that the juror was incompetent, and that the decision of the district court in overruling a challenge to him for cause was prejudicial error.— *Thurman v. State*, Neb., 43 N. W. Rep. 404.

65. LANDLORD AND TENANT—Crops.—In case of a lease of a farm containing a covenant for the payment of rent by the lessee, but no provision for a re-entry for a breach of the covenant, the lessor, claiming that certain rent was due on the lease, brought an action, under Gen. St. 1878, ch. 84, against the lessee to recover possession of the premises, which resulted in a judgment in his favor, from which the lessee appealed to the district court, giving the stay appeal-bond required by statute, and remaining in possession. The trial of the appeal in the district court also resulted in judgment in favor of the lessor for the restitution of the premises. After the commencement of the action, but before judgment in the district court, the lessee, while still in possession of the premises, harvested and removed therefrom a crop of grain sown by himself: *Held*, that the grain belonged to the lessee, and not to the lessor. —*Woodcock v. Carlson*, Minn., 43 N. W. Rep. 479.

66. LEASE BY TENANT IN COMMON. — A sealed lease by a tenant in common, "for himself and as agent of" his co-tenants, and signed by him alone, is not void, and the lessee who takes possession thereunder is liable on his covenant for rent.—*Harms v. McCormick*, Ill., 22 N. E. Rep. 511.

67. LIFE INSURANCE— Evidence. — In an action on a policy of life insurance, the coroner's inquisition upon the body of the insured is competent evidence as to the cause of his death, as the Illinois statutes requiring the inquest to be returned to the clerk of the circuit court of the county, and filed, makes it a public record.—*United States Life Ins. Co. v. Kielgast*, Ill., 22 N. E. Rep. 466.

68. MALPRACTICE.—In an action for malpractice in the treatment of a broken leg it appeared that in setting the leg and in its treatment defendants exercised ordinary care and skill, but when the patient was discharged they gave him no instruction as to the care of the injured leg. The leg soon became bent, and finally had to be amputated: *Held*, that the failure to give instructions as to the care of the leg was negligence for which they were liable. — *Beck v. The German Klinik*, Iowa, 43 N. W. Rep. 627.

69. MARRIED WOMAN.— Where a married woman, who keeps boarders, purchases a swine with a view to its natural increase, though the animal and its progeny are fed from the waste of the table, which is even greater on that account, the purchase is in the nature of a profitable investment of the savings of the business, and not "property employed in the business," within the meaning of Pub. St. ch. 147, § 11, requiring a married woman doing business on her own account to file in the clerk's office a certificate of the nature and location of the business before the "property employed in the business" will be exempt from attachment as the property of her husband.— *Lockwood v. Corey*, Mass., 22 N. E. Rep. 440.

70. MUNICIPAL IMPROVEMENTS — Assessments.— The owner of property specially assessed for grading and paving a street, who does not show that his land has been assessed more than it has been benefited, or more than its proportionate share of the cost of the proposed improvement, cannot object to the confirmation on the ground that part of the land occupied by said street belongs to him and is in his possession. — *Hunerberg v. Village*, Ill., 22 N. E. Rep. 486.

71. MUTUAL BENEFIT ASSOCIATION.—Where it appears that the insured member had the right to change the beneficiary at his option the records of the association during the life of the member are *prima facie* evidence in respect to the rights of the beneficiary, the latter having no vested interest in the certificate.—*Bagley v. Grand Lodge*, Ill., 22 N. E. Rep. 487.

72. NAVIGABLE WATERS—Injunction.—The Mississippi river, being a navigable stream, is within the exclusive control of congress, and neither the city of New Orleans nor the State of Louisiana can authorize any obstruction of its navigation; nor can the courts extend the injunction so as to protect complainant in the erection of structures outside the wharf line of the city.—*Texas & P. Ry. Co. v. City*, U. S. C. C. La., 40 Fed. Rep. 111.

73. NEGLIGENCE.—In an action for negligence, causing the death of plaintiff's infant son, by piling lumber in the street in an unsafe manner, the declaration averred that defendant knew that piling lumber in the street in such manner was calculated to induce children to play around it: *Held*, that such averment was a matter of common knowledge, and need not be specifically proved.—*Spengler v. Williams*, Miss., 6 South Rep. 613.

74. NEGLIGENCE. — Plaintiff approached a railroad crossing with a wagon and team, without stopping his team before crossing the track, and was struck and injured. The wagon was old, and made considerable noise, and he knew that a train was due about that time, and there were obstructions in his view of the track: *Held*, that he was not guilty of negligence, as matter of law, and it was proper to submit the question of comparative negligence to the jury.—*Chicago & I. R. Co. v. Lane*, Ill., 22 N. E. Rep. 514.

75. NEW TRIAL—Evidence.—Evidence offered as newly discovered, to obtain a new trial, and tending to show direct admissions of plaintiff, is not cumulative, where the only similar evidence on the trial was that statements to the same effect were made by another in plaintiff's presence, and the question was submitted to the jury whether the party, at the time, either heard them

or so realized their import as to be able to contradict them.—*Goldsworthy v. Town of Linden*, Wis., 43 N. W. Rep. 616.

76. PARTNERSHIP—Compensation.—One of two partners having, by the excessive use of stimulants voluntarily disabled himself from performing services in the firm affairs, and thus cast upon his partner more than a due share of labor, his agreement after dissolution, to allow his copartner, out of the assets, a specific sum per month for a definite number of months for past service, is not without consideration, but is supported by a strong moral obligation, which, under the Code, is sufficient to render the agreement obligatory as a contract.—*Gray v. Hamil*, Ga., 10 S. E. Rep. 205.

77. PARTNERSHIP — Accounting. — On bill for an accounting between partners, where it appears that both partners had daily access to the firm books, and had struck repeated balances of the partnership accounts without complaint or objection till after the firm was dissolved, it is proper for the master to state the account according to the entries in the books though these are not in accord with the written agreement of copartnership, and though the evidence as to any modification of the agreement is conflicting.—*Gregg v. Hord*, Ill., 22 N. E. Rep. 528.

78. PARTNERSHIP.—Where a partnership, formed under an oral agreement, purchases land, and takes title, by consent, in the name of one partner, the other partner cannot invoke the statute of frauds to defeat a recovery on notes given by him to his copartner for his interest in the land.—*Allison v. Perry*, Ill., 22 N. E. Rep. 492.

79. PLEADING FOREIGN STATUTE.—The averment in a petition that under the statutes of another State complainants are sole heirs of an intestate is not a sufficient allegation of the statutes of such foreign State, and need not be denied.—*Temple v. Brittan*, Ky., 12 S. W. Rep. 306.

80. PLEDGE—Dividends.—Where, upon renewal of a note secured by pledge of railroad stock, the old note and contract of pledge are returned, and a new contract of pledge given, the pledgee entering the transaction on its books as if the old note had been paid and a new loan made, the original contract of pledge is extinguished, and the pledgee acquires no title to dividends accruing before the renewal of the note. — *Fairbank v. Merchants' Nat. Bank*, Ill., 22 N. E. Rep. 524.

81. PROCESS—Corporations.—The recording agent of an insurance company, whose business is merely to write policies and look after the interests of the company in conection with property insured by him, is not an agent employed in the general management of the business, within the meaing of Code Iowa, 1873, § 1612, relating to service of process on corporations.—*State Ins Co. v. Waterhouse*, Iowa, 43 N. W. Rep. 611.

82. RES ADJUDICATA.—After a mortgage has been duly foreclosed in a federal court having jurisdiction of defendant's person, and of the subject-matter of the suit, and the statutory period for redemption has expired, a State court will not decree redemption on the ground that, pending the foreclosure suit, an agreement was made to reduce the rate of interest, and extend the time of payment of the mortgage debt.—*Windett v. Connecticut Mut. Life Ins. Co.*, Ill., 22 N. E. Rep. 474.

83. REWARD.—The reward, under Code Miss. § 3035, providing that any person who shall arrest any one who has killed another, and is fleeing, or attempting to flee, before arrest, and shall deliver him up for trial, shall be entitled to the sum of $100 out of the treasury of the county in which the homicide occurred, is payable by the county in which the fatal injury is inflicted, without regard to the place of death.—*Beard v. Wells*, Miss., 6 South. Rep. 614.

84. SALE—Rescission.—In an action to recind a contract for the purchase of a piano on account of fraudulent representations, the evidence showed that before plaintiff had decided to purchase the piano, defendant took it to her house without her consent or request, and was allowed to leave it on trial; that thereafter plaintiff purchased it and paid the consideration therefor; and that it remained there down to the week of the trial: *Held*, that a non-suit, on the ground that there was no proof that plaintiff was in condition to return the piano at the time of trial, was not warranted, as the presumption is that it remained there for defendant.—*Bell v. Anderson*, Wis., 43 N. W. Rep. 666.

85. SALE—Rescission.—Where one who has agreed to purchase goods to be manufactured notifies the seller, after receiving part of the goods, not to deliver any more, the seller may decline to treat the contract as broken, and proceed to manufacture and tender the residue of the goods.—*John A. Roebling's Sons Co. v. Lock-Stitch Fence Co.*, Ill., 22 N. E. Rep. 518.

86. SPECIFIC PERFORMANCE.—Specific performance of an entire contract for sale of land by three persons owning in severalty cannot be enforced at the instance of two of them, where the third has, since making the contract, and before action, sold his land to a third person, and the proof fails to show that the sale was procured by the person who had agreed to purchase in order to defeat the contract.—*Gaither v. O'Doherty*, Ky., 12 S. W. Rep. 306.

87. TENDER—Costs.—A payment into court, after suit brought, of the sum admitted to be due, without a tender of the accrued costs, does not bar plaintiff's right to recover the amount admitted to be due.—*Collier v. White*, Miss., 6 South, Rep. 618.

88. TRUSTS—Validity.—A bequest of all the residue of the testator's estate to trustees, to be converted into personalty, and the income arising therefrom to be paid to the board of water commissioners of Detroit, or their successors, to be used by them in improving and beautifying the grounds whereon the water works are situated, and for the maintenance of a library, is valid; being a trust of which the subject, the beneficiaries, and the purposes are clearly defind.— *Penny v. Croul*, Mich., 43 N. W. Rep. 649.

89. VENDOR AND VENDEE.—Defendants made a contract for the sale of land to plaintiff, who agreed to assume a certain mortgage outstanding against it. Defendants' title rested on a deed to them, which recited that the grantor was seised in his own name, but in the right of, and for the use and benefit of, a certain firm. The grantor held under a proper deed to himself. A judgment was recorded against him while the title was in him, but there was parol evidence that he had purchased with money of the firm, and held the land as firm property. Plaintiff refused to take a conveyance on account of the judgment lien: *Held*, that defendants could not give such title as was plaintiff's right, and plaintiff could recover a partial payment made.—*Moore v. Williams*, N. Y., 22 N. E. Rep. 233.

90. WATER-COURSES—Obstruction.—Rev. St. Wis. 1598, provides that every person who shall obstruct any navigable stream in any manner so as to impair the free navigation thereof, or place in such stream, or any tributary thereof, any substance whatsoever, so that the same may obstruct such stream or impede its free navigation, or construct or maintain any boom not authorized by law, shall be liable, etc.: *Held*, that a dam which interferes with the passage of logs is not an unlawful obstruction unless it materially impaired the value of the stream for floating purposes.—*A. C. Conn Co., v. Little Suamico Lumber Co.*, Wis., 43. N. W. Rep. 660.

91. WILLS—Testamentary Capacity.—While, in order to possess testamentary capacity, the testator must understand the business in which he is engaged; must know and understand the extent and value of his property, and how he desires to dispose of it; and must have sufficient memory to keep these facts in his mind long enough to dictate or write his will without prompting from others.—yet it is not necessary that he should know the number and condition of his relatives, their claims upon his bounty, or should understand the reason for giving or withholding his bounty from any such relatives.—*Spratt v. Spratt*, Mich., 43 N. W. Rep. 627.

INDEX-DIGEST

TO THE EDITORIALS, NOTES OF RECENT DECISIONS, LEADING ARTICLES, ANNOTATED CASES, LEGAL NEWS, CORRESPONDENCE AND BOOK REVIEWS IN VOLUME 29.

A separate subject-index for the "Digests of Current Opinions" will be found on page 511, following this Index-Digest. Besides the customary abbreviations the following are used: ann. case—annotated case; C. E.—Current Events; R. D.—Notes of Recent Decisions.

SUBJECT-INDEX

TO ALL THE "DIGEST OF CURRENT OPINIONS" IN VOL. 29.

This subject index will, we trust, be found convenient and satisfactory. It contains a reference *under its appropriate head* to every digest of current opinions which has appeared in the volume. The references, of course, are to the pages upon which the digest may be found. There are no cross-references, but each digest is indexed herein under that head, for which it would most naturally occur to a searcher to look. It will be understood that the page to which reference, by number, is made, may contain more than one case on the subject under examination, and therefore the entire page in each instance will necessarily have to be scanned in order to make effective and thorough search.